PROFESSIONAL OPPORTUNITIES FOR CHARTERED ACCOUNTANTS

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TABLE OF CONTENTS

CHAPTER NO.	TOPICS
1	Trade Remedy Measures (Anti- Dumping, Anti-subsidy and safeguard duties)
	1.1 Introduction
	1.2 Professional opportunities
	1.3 Reference Material
	1.4 Related websites
2	Export Import Trade/ Customs valuation
	2.1 Introduction
	2.2 Professional Opportunities
	2.3 Reference Material
	2.4 Related websites
3	International Commercial Arbitration
	3.1 Introduction
	3.2 Professional Opportunities
	3.3 Reference Material
	3.4 Related websites
4	Special Economic Zones/ 100 % Export Oriented Units (EOU) / Software Technology Parks(STP) / Electronic Hardware Technology Parks(EHTP)
	4.1 Introduction
	4.2 Professional Opportunities
	4.3 Reference Material
	4.4 Related websites

5	Trade Related Intellectual Property rights (TRIPS)
	5.1 Introduction
	5.2 Professional Opportunities
	5.3 Reference Material
	5.4 Related websites
6	Advisory and related services to the State and Central Government
	6.1 Advisory Services Related To State & National Govt. Budgets
	6.2 Drafting & Impact Study of Free Trade Agreements (FTA)
	6.3 Representation for National Governments
	6.4 Investigations for Determination of Rules of Origin
	6.5 Agreement on Agriculture
7	Academic/ research opportunities
8	Tax Havens
	8.1 Introduction
	8.2 Professional Opportunities
	8.3 Reference Material
	8.4 Related websites
9	International Taxation
	9.1 Introduction
	9.2 Professional Opportunities
	9.3 Reference Material
	9.4 Related websites
10	Inbound and Outbound Investments and various Rules and Regulations under FEMA,1999
	Part A
	10.1 Introduction
	10.2 Professional Opportunities
	10.3 Reference Material
	10.4 Related websites
	Part B
	10.1 Introduction
	10.2 Professional Opportunities
	10.3 Reference Material
	10.4 Related websites
11	Cross border Mergers and Acquisitions

	11.1 Introduction
	11.2 Professional Opportunities
	11.3 Reference Material
	11.4 Related websites
12	Competition Law
	12.1 Introduction
	12.2 Professional Opportunities
	12.3 Reference Material
	12.4 Related websites
13	Knowledge Process outsourcing(KPO) sector
	13.1 Introduction
	13.2 Professional Opportunities
	13.3 Related websites
14	Corporate Governance
	14.1 Introduction
	14.2 Professional Opportunities
	14.3 Related websites
15	Business Valuation
	15.1 Introduction
16	Limited Liability Partnership
	16.1 Introduction
	16.2 Professional opportunities
17	Internal Audit
18	Prevention of Money Laundering
19	Other areas

The opportunities for a Chartered Accountant are clearly vast and the scope massive. The listing below is an indication of the opportunities prevalent in various areas

Chapter 1

Trade Remedy Measures (Anti- Dumping, Anti-subsidy and safeguard duties)

1.1 Introduction

The fundamental principles of the GATT/WTO system are reciprocity and nondiscrimination. However, a number of exceptions to GATT's nondiscrimination rule exist, like contingent protection, government procurement, and regional trading agreements. The term trade remedy refers to trade restrictions, which can be introduced under specific circumstances, providing protection from imports beyond the protection granted by the tariff schedules negotiated as part of GATT. Trade remedy measure thus represents an exception to the GATT/WTO fundamental principles of reciprocity and nondiscrimination.

Temporary restrictions allowed by the WTO are anti-dumping duties, countervailing duties, and safeguard measures, (tariffs to assist with balance of payments problems, tariffs to protect infant industries, or tariffs for emergency protection). Permanent exceptions are general waivers from binding obligations, which –in contrast with the other mechanisms – must be formally approved by the WTO Council.

Countervailing duties and anti-dumping duties are special offsetting import taxes allowed by the WTO under specific circumstances of unfair competition (export subsidies or dumping on the part of trading partners), conditional on a detailed investigation showing that the domestic industry is being hurt. These are discriminatory measures, in that they are just applied against one trading partner. Safeguard measures are temporary trade restrictions protecting an industry from fair competition, beyond the protection afforded by tariffs negotiated as part of GATT. They are non discriminatory measures as they are applied to all trade partners.

Application and imposition of these measures has a large impact on the traders, exporters and importers operating in International market. The practice areas in this field is mainly related to advisory , consultancy , preparation and representation for and on behalf of individuals and bodies involved in International Trade.

1.2 Professional Opportunities

A. Anti-Dumping Duties

1. Preparation and execution of a well organized business plan
2. Strategic planning, market research for domestic and international markets to avoid anti-dumping problems
3. Analysis of substantive injury to the industry
4. Analysis of various indices affecting the industry
5. Assistance in Dumping calculations, injury studies, verification, expert evidence at hearings etc
6. Preparing Price and Adjustment Data
7. Analyzing Cost of Production
8. Assisting at Verification and Public Hearings
9. Assessing the Strategic and Commercial Implication of Trade Actions
10. Providing detailed reviews of dumping calculation or injury analysis disclosures
11. Assistance in preparing defense strategies in anti-dumping investigation
12. Negotiations for price undertakings, cost records and financial implications etc. in the matter of initiation of the case or in the defense of a case initiated and on participating in the proceedings and minimizing the liabilities, both prior to and after the initiation of the formal proceedings.
13. International pricing analysis
14. Detailed cost accounting analysis
15. Large-scale database analysis
16. Price monitoring analysis
17. Competitive industry analysis
18. Statistical analysis
19. Expert financial analysis and testimony before the Department of Commerce

B. Anti-Subsidy Duties

1. Analyzing the countervailibility of a foreign Government's subsidising exports

2. Examining the legal and economic aspects of various subsidy programs which are actionable under the W.T.O agreements on subsidies
3. Preparing comprehensive financial and substantive representations for the defence and/or initiation of a case

C. Safeguard Duties

1. Safeguard duties are temporary measures in defence of the Domestic Industry which is injured or has potential threat of injury due to sudden surge in imports.
2. To formulate a complete strategy, carry out market research and prepares a comprehensive report for initiation and/or defence of a Safeguard Duty case.
3. Representing exporters to face Safeguard investigations by foreign countries.
4. Representation before WTO Dispute Settlement Forum & other statutory authorities.
5. Preparation of Application on behalf of domestic industry for requesting Government to take actions against the exporting countries.

D. W.T.O Dispute Settlement proceedings

1. Preparation of arguments and evidence for WTO dispute settlement proceedings
2. Advice and strategies for multilateral and bilateral trade negotiations
3. Providing expert analysis and opinions
4. Providing realistic assessments on whether measures can be challenged in the WTO.
5. Preparing and presenting evidence before anti-dumping administrations or in WTO disputes.

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The professional opportunities in trade remedy measures can further be divided into the following sub-heads:

I. Defining the Primary Parameters of an Investigation

Companies and professionals must address a number of technical issues in the early phase of every antidumping and countervailing duty action. These analyses are critical and go a long way in handling the anti-dumping proceeding. The focus point of treatment of trade remedy measures shall be:

a. Pre-petition subsidy and pricing assessment
b. Cost/benefit analysis of participation in a proceeding
c. Analysis of product scope and matching issues
d. Sales below cost allegations and rebuttals
e. Use of statistical sampling techniques for determining respondents

f. Surrogate country assessment for non-market economy cases
g. Potential antidumping or subsidy margins

II. Preparing Price and Adjustment Data

One of the most difficult and critical elements of any antidumping proceeding is the preparation and analysis of transaction-specific pricing and adjustment data. Government investigative agencies require comprehensive data on prices, discounts, rebates, transportation charges, and selling expenses. In many cases, this information must be sourced and compiled from multiple locations and/or multiple information systems, and merged into a single database. The data must be prepared rapidly and accurately with regards to the following:

a. On-site review of accounting and production records
b. Preparation of allocation methods and spreadsheet
c. Drafting narrative questionnaire responses and technical appendices
d. Coordinating the collection of data from multiple locations
e. Preparing data for submission to the Department of Commerce

III. Analyzing Cost of Production

Nearly every antidumping proceeding requires the analysis and calculation of model or product specific cost of production information. The focus area for the purpose of analysing Cost of Production shall be on:

a. Developing model or product specific costing systems for companies which lack such information in their normal accounting system
b. Applying specialized current cost methodologies in "hyperinflationary" economies
c. Assessing the reasonableness of company accounting methods and host country generally accepted accounting principles
d. Conducting arm’s length pricing analysis of inputs provided by affiliated parties
e. Calculating factor of production information for producers in economies considered to be "non-market"

IV. Assisting at Verification and Public Hearings

On-site verification of submitted information is a standard part of antidumping and countervailing duty investigations. Professional assistance is required by companies in preparing for these laborious audits, and provides assessments of the ensuing official verification reports.

a. Prepare document traces
b. Represent clients at on-site verification
c. Provide technical arguments and analysis for briefs

d. Testify at public hearings
e. Meet with government officials

V. Assessing the Strategic and Commercial Implication of Trade Actions

A company's position on trade regulatory actions, such as antidumping proceedings, should be framed in advance with synchronisation with its overall business objectives. A Professional approach to deal with potential or actual trade actions prepares a company to effectively deal with Trade remedial actions.

Professional advice is required for the following:

a. Assessment of strategic risks and rewards associated with participation in trade proceedings
b. Assessing the potential costs of trade cases, in terms of impact on sales, production costs, and human resources.
c. Considering alternative sourcing strategies

1.3 Reference Material:

a) The agreement on Anti-dumping (i.e. the Agreement on the Implementation of Article VI of GATT, 1995)
b) Anti- dumping guidelines issued by Directorate General of Anti- dumping and allied duties, Ministry of Commerce- http://commerce.nic.in/ad_guide.htm
c) Legal framework and provisions on safeguard provisions issued by the Directorate General of Safeguards (Dept. of Revenue, Ministry of Finance, Government of India) http://dgsafeguards.gov.in/default.asp
d) Safeguard Provisions under the Customs Tariff Act, 1975 (Section 8B)
e) Safeguard Duty Rules under the Customs Tariff Act, 1975
f) Transitional Safeguard Provisions under the Customs Tariff Act, 1975 (Section 8C)
g) Transitional Safeguard Duty Rules under the Customs Tariff Act, 1975

1.4 Related websites

Addresses and Web sites of Authorities and Organisation related to Trade measures

1	Govt. of India Directory	http://goidirectory.nic.in/
2	Ministry of Finance	http://finmin.nic.in/
3	Central Board of Excise & Customs	http://www.cbec.gov.in/
4	Ministry of Commerce	http://www.cbec.gov.in/
5	Directorate General of Anti-Dumping	http://commerce.nic.in/ad_guide.htm

6	Director General of Safeguards	http://dgsafeguards.gov.in/default.asp
7	Investment and Technology Promotion	http://www.indiainbusiness.nic.in/
8	Ministry of External Affairs Government of India Directorate General of CIS	http://www.dgciskol.nic.in/
9	Confederation of Indian Industry (CII)	http://www.ciionline.org/
10	Federation of Indian Chambers of Commerce & Industry (FICCI)	http://www.ficci.com/ficci/index.htm
11	The Associated Chambers of Commerce & Industry (ASOCHAM)	http://www.assocham.org/
12	World Trade Organisation	http://www.wto.org/
13	Safeguard Measures – World Trade Organisation	http://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm
14	United Nations	http://www.un.org/
15	Centre for Trade Development	http://www.centad.org/gwa_2.asp
16	The World Bank	http://www.worldbank.org/
17	Asian Development Bank	http://www.adb.org

Chapter 2

Export Import Trade/ Customs valuation

2.1 Introduction

All over the world, Trade has become highly competitive and the barriers of trade are also crumbling slowly but steadily. Globalisation, liberalisation, multilateralism has given rise to a new league of businessmen and entrepreneurs' .In a highly competitive world Trade globalisation has placed the Indian businessmen and entrepreneurs face to face with their foreign counterparts and they are also ready to face the competition.

The opening up of markets to the global economy is leading to the emergence of a single market for goods, capital, technology, services, and information and, to a limited extent, for labour. This trend towards trade liberalisation has seen the lowering of trade barriers and the elimination of subsidies as protectionist economic policies have been progressively dismantled. In the expansion of trade and investment in the search for new markets and more competitive production sites the new league of businessmen and entrepreneurs has been highly forthcoming. The traders and manufacturers in India are ready to leverage the advantages that have resulted from the globalisation and liberalisation of the economy. The Indian businessmen and entrepreneurs are ready to compete with their foreign counterparts in the Export market and willing to provide a better product and service at a much competitive price.

2.2 Professional Opportunities

Opportunities for professionals occur in the area of business advisory to their existing clients and new clients who are looking for international opportunities to effect the transition from domestic trade to foreign trade.

Some of the services have been enumerated as under:

1. Advisory on Foreign Trade Policy and Procedures
2. Compliance with Foreign Trade Procedures
3. Setting up 100% EOU/STP/EHTP/BTP/SEZ units
4. Assistance in fulfilling the regulatory and licensing requirements
5. Obtaining government clearances
6. Liasoning across related government agencies
7. Documentation
8. Risk assessment
9. Ensuring compliance of various national rules and regulations
10. Judicious management of finance, credit and security

11. Consulting
    a. General
    b. Financial
    c. Project
    d. Taxation
    e. Accounting and auditing services
12. Analysis of business operations and facilitation services
13. Formation of a company/subsidiary of a foreign company
14. Development of strategies and implementation plans according to the specific needs of the clients
15. Consulting, documentation and facilitation for
    a. Exports and imports for Export-Import Policy
    b. Licenses
    c. Incentives
    d. Logistics
    e. Export-Import Finance and benefits from Government Schemes and Programmes
    f. Export-Import legal matters
    g. Getting Foreign Investment and related matters like Setting up of Business Operations in India including Liaison Office, Branch Office, Subsidiary Company, Joint Ventures,
    h. Approval of Investments from RBI/FIPB/Ministries,
    i. Quality certification for Foreign Companies exporting to India (as required under BIS regulations),
    j. Domestic operations & Incorporations like Formation of companies in India & related issues with ROC, RBI & other Government departments, Registrations with DGFT(IEC), EPC(RCMC), Industry Ministry (IEM), Income tax (PAN), Sales tax, Excise, Representation of Cases Before Central Excise Appellate Authorities, Customs Authorities, Fixation of /Brand Rates for Drawback, Rebate/ Refund of Central Excise Duties, Customs Duties etc.
16. Application and Issuance of DEPB, DFRC, Advance License, EPCG License, Duty Drawback, Deemed Export Benefits
17. Representation and Liaison
    a. With DGFT, RBI and Ministries for import-export licenses & other matters,
    b. For Foreign companies/NRIs/OCBs in India, Indian Investments Abroad, OCBs etc

18. Technical Advisory to Government bodies and Policy makers on Policy Formulation
19. Planning, Strategizing and implementation for clearances of Project Imports, Plant Relocations, Restricted Items Imports

Agreements on Customs Valuation

1. Representing the corporate and non-corporate clients before customs and subsequent statutory authorities.
2. Helping the Customs Department in correct assessment the valuation aspects of Imported goods

2.3 Reference Material

a. Foreign Trade Policy 2004-2009
b. Foreign Trade Procedure 2004-09
c. Public Notices
d. Highlights of Foreign Trade Policy 2004-2009
e. Glossary of Terms - Foreign Trade Policy
f. Annual Supplement 2006 to the FOREIGN TRADE POLICY 2004-09
g. Customs Tariff Act, 1975
h. Foreign Exchange Management Act, 1999
i. Foreign Trade (Development and Regulation) Act 1992
j. Foreign Trade Regulation Rules, 1993
k. Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993
l. Central Excise Act,1944
m. RBI Circulars

2.4 Related Websites

Addresses of Web sites of Authorities and Organisation International and National relevant for foreign Trade

Sl.No	Organisation	Web-site
1	Directorate General of foreign Trade- Ministry of Commerce	http://dgft.delhi.nic.in/
2	Ministry of Commerce	http://commerce.nic.in/
3	Govt. of India Directory	http://goidirectory.nic.in/
4	Ministry of Finance	http://finmin.nic.in/
5	Central Board of Excise & Customs	http://www.cbec.gov.in/
6	Federation Of Indian Export Organisations (FIEO)	www.fieo.org
7	Reserve Bank of India (RBI)	http://www.rbi.org.in/
8	Inland Container Depot(ICD) Delhi Customs	http://www.geocities.com/icddelhi/
9	Indian Mission & Posts, Ministry of External Affairs Government of India	http://meaindia.nic.in/onmouse/mission.htm
10	Directorate General of Anti-Dumping	http://commerce.nic.in/ad_guide.htm
11	Director General of Safeguards	http://dgsafeguards.gov.in/default.asp
12	Ministry of External Affairs Government of India	http://meaindia.nic.in/
13	Office of Development Commissioner (MSME)	http://www.smallindustryindia.com/
14	Ministry of Textiles, Govt. of India - Office of the Textile Commissioner, Mumbai	http://www.txcindia.com/
15	Confederation of Indian Industry (CII)	http://www.ciionline.org/
16	Federation of Indian Chambers of Commerce & Industry (FICCI)	http://www.ficci.com/ficci/index.htm

17	The Associated Chambers of Commerce & Industry (ASOCHAM)	http://www.assocham.org/
18	World Trade Organisation	http://www.wto.org/
19	Safeguard Measures – World Trade Organisation	http://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm
20	Centre for Trade Development	http://www.centad.org/gwa_2.asp
21	The Cotton Textiles Export Promotion Council Of India [TEXPROCIL]	http://www.texprocil.com/
22	World Customs Organisation	http://www.wcoomd.org/ie/index.html
23	World Bank, Washington, US	http://www.worldbank.com/
24	Asia Trade Forum of the Irish Exporters Association	http://www.irishexporters.ie/asia
25	Australia India Chamber of Commerce	http://www.aicc.com.au/
26	China Council for the Promotion of International Trade	http://211.167.234.132/engVersion/indexEn.html
27	Chinese Manufacturers' Association	http://www.cma.org.hk/
28	Indian Business Chamber in Vietnam	http://www.inchamvietnam.org/
29	Kuala Lumpur and Selangor Indian Chamber of Commerce and Industry	http://www.klsicci.com.my/
30	Korea International Trade Association (KITA)	http://www.kita.org/

Chapter 3

International Commercial Arbitration

3.1 Introduction

International arbitration is the established method today for resolving disputes between parties to international commercial agreements. As with arbitration generally, it is a creature of contract, i.e., the parties' decision to submit any disputes to private adjudication by one or more arbitrators appointed in accordance with rules the parties themselves have agreed to adopt, usually by including a provision for the same in their contract. The practice of international arbitration has developed so as to allow parties from different legal and cultural backgrounds to resolve their disputes, generally without the formalities of their underlying legal systems.

The growth of international trade has given rise to international disputes which transcend national frontiers and geographical boundaries. For the resolution of such disputes the preference to international arbitration vis-à-vis litigation in national courts is natural because of arbitration being preferred to litigation in courts and the foreign element being preferred in the international arbitration to the domestic element in the national courts. This is also because there is no international court to deal with international commercial disputes.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention, adopted by diplomatic conference on 10 June 1958, was prepared by the United Nations prior to the establishment of UNCITRAL; promotion of the Convention is an integral part of the Commission's programme of work. The Convention is widely recognized as a foundation instrument of international arbitration and requires courts of contracting States to give effect to an agreement to arbitrate when seized of an action in a matter covered by an arbitration agreement and also to recognize and enforce awards made in other States, subject to specific limited exceptions. The Convention entered into force on 7 June 1959. And **As of December 1, 2006 there were 139 nations as parties to this Convention, India being one of the signatory.**

3.2. Professional opportunities

1. Guidance to clients in the process of undertaking settlement of Disputes at various international arbitration agencies.
2. To act as an arbitrator for international commercial disputes.

3. Guidance to draft commercial trade agreements in consonance with the principles of Alternative Dispute Resolution
4. Guidance to draft a proper arbitration agreement considering the arbitration rules promulgated by various international institutions.

3.3 Reference Material

1. The Arbitration and Conciliation Act ,1996
2. The Foreign Award (Recognition and Enforcement) Act, 1961
3. The Arbitration (Protocol and Convention)Act ,!937
4. The Arbitration Act ,1940
5. The Arbitration Act ,1996 (U.K)
6. UNCITRAL Arbitration Rules
7. The Universal Arbitration and Conciliation Act ,1996
8. UNCITRAL Model Law on International Commercial Arbitration
9. Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention
10. European Convention on International Commercial Arbitration
11. ICC Rules of Arbitration(1998)
12. The ICADR Fast Track Arbitration Rules

3.4 Related websites

Addresses of Web sites of Authorities and Organisation International and National dealing and with International Arbitration

Sl.No	Organisation	Web-site
1	International Chamber of Commerce in Paris (ICC)	www.iccwbo.org
2	American Arbitration Association (AAA)	http://www.adr.org/
3	London Court of International Arbitration (LCIA)	www.lcia-arbitration.com/
4	WIPO Arbitration and Mediation Center	http://www.wipo.int/amc/en/center/index.html
5	International Center for Settlement of Investment Disputes (ICSID)	www.worldbank.org/icsid/
6	Permanent Court of Arbitration	http://www.pca-cpa.org
7	Iran United States Claim Tribunal	www.iusct.org/

8	United Nation Compensation Commission	www.unog.ch/uncc/
9	The Claims Resolution Tribunal for Dormant Accounts in Switzerland	www.crt-ii.org/_crt-i/frame.html
10	Singapore International Arbitration Centre (SIAC)	www.siac.org.sg/
11	Commercial Arbitration and Mediation Centre of the Americas (CAMCA)	www.bcicac.com/
12	China International Economic and Trade Arbitration Commission	www.cietac.org.cn/index_english.asp
13	China Maritime Arbitration Commission (CMAC)	www.cmac-sh.org/en/rules.asp
14	The International Institute for Conflict Prevention and Resolution (CPR)	http://www.cpradr.org/
15	Hong Kong International Arbitration Centre (HKIAC)	www.hkiac.org/
16	The International Council For Commercial Arbitration (ICCA)	http://www.arbitration-icca.org/
17	The Institute of Arbitrators & Mediators Australia (IAMA)	www.iama.org.au/
18	International Bar Association (IBA)	www.ibanet.org/legalpractice/Arbitration.cfm
19	National Arbitration Forum	www.arb-forum.com/
20	The Stockholm Chamber of Commerce.	www.sccinstitute.com/
21	Society of Maritime Arbitrators	http://www.smany.org/
22	Vietnam International Arbitration Centre (VIAC)	http://english.viac.org.vn/

Chapter 4

SPECIAL ECONOMIC ZONES/ 100 % EXPORT ORIENTED UNITS (EOU) / SOFTWARE TECHNOLOGY PARKS (STP) / ELECTRONIC HARDWARE TECHNOLOGY PARKS (EHTP)

4.1. Introduction

SPECIAL ECONOMIC ZONES (SEZ)

Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

FOREIGN TRADE POLICY (FTP)

Foreign Trade Policy means the Foreign Trade Policy notified from time to time by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act 1992 (22 of 1992);

AGRI-EXPORT ZONES (AEZ)

The Government of India (GOI) had announced the creation of Agri Export Zone (AEZ) in the EXIM POLICY 2001-02 with the objective of promoting greater exports of fresh and processed agricultural produce from the country The scheme is implemented by the Ministry of Commerce, GoI, through APEDA (the Agriculture and Processed Food Export Development Authority), New Delhi which is the nodal agency for AEZ

BIO- TECHNOLOGY PARKS (BTP)

The Government of India first proposed to establish Biotechnology Parks in the country with all the facilities of 100% Export Oriented Unit in the foreign Trade Policy (2004-09)
Bio technology encompasses any technique, which uses living organisms or parts thereof to make or modify products, improve plant or animal productivity or to develop micro organisms for specific use. BTP means Biotechnology Park as notified by Director General of Foreign Trade on the recommendation of the Department of Biotechnology (Ministry of Science and Technology)

ELECTRONIC HARDWARE TECHNOLOGY PARKS (EHTP)

For encouraging exports of electronic hardware items including hard disk drives, computers, television, etc., such parks have been developed by the Ministry of Communications & Information Technology. An Electronic Hardware Technology Park (EHTP) may be an individual unit by itself or a unit located in an area designated as EHTP Complex. As in the case of STP Scheme, the EHTP Scheme is also administered by the Ministry of Communications & Information Technology. Incentive Package for Electronic Hardware was announced in the Foreign Trade Policy 2002-07. An EHTP can also be set up by the Central Government, State Government, public or private sector undertakings or any combination of them.

100% EXPORT ORIENTED UNITS SCHEME

A 100 per cent export-oriented unit is an industrial unit offering for export its entire production, excluding the permitted levels of domestic tariff area sales for manufacture of goods, including repair, re-making, reconditioning, re-engineering and rendering of services. Trading units are not covered under this scheme

The EOU scheme was introduced in the year 1980 vide Ministry of Commerce resolution dated 31st December 1980. The purpose of the scheme was basically to boost exports by creating additional production capacity. The EOU scheme is complementary to the EPZ scheme, except that it is widely dispersed in location, unlike EPZs, which are set up at specific locations.
The Export Oriented Unit (EOU) Scheme, which had been introduced in the early 1980s remains in the forefront of country's export production schemes. The scheme has witnessed many changes over the last twenty-four years in the context of ever changing economic realities. However, the basic premise remains the same. This premise is that the exporters are treated as a special class and given the required tariff, non-tariff and policy support to facilitate their export efforts. Thus, today the EOU Scheme has emerged as a dynamic policy initiative facilitating the exporting community in the task of increased exports. Earlier, the scheme was basically for manufacturing sector with certain minimum value addition in terms of export earnings. The EOU scheme is presently governed by Chapter 6 of the Foreign Trade Policy 2004-09 and Chapter 6 of the Handbook of Procedures and Appendix 14 I A to Appendix 14 I N.

FREE TRADE AND WAREHOUSING ZONES

The concept of Free Trade and Warehousing Zones was introduced by Chapter 7A of the Foreign Trade Policy 2004-09 on 31st August 2004. Chapter 7A has been deleted in the Foreign Trade Policy 2006-07. The Special Economic Zones Act 2005 and Special Economic Zones Rules 2006 now apply to FTWZs from 10th February 2006.

The scheme envisages creation of world-class infrastructure for warehousing of various products, state-of-the-art equipment, transportation and handling facilities, commercial office-space, water, power, communications and connectivity, with one-stop clearance of import and export formality, to support the integrated Zones as 'international trading hubs'. These Zones would be established in areas proximate to seaports, airports or dry ports so as to offer easy access by rail and road. Though no manufacturing activity would be permitted, activities like repackaging would be permitted in these zones.

INTERNATIONAL FINANCIAL SERVICES CENTRE

Financial Centers can be broadly categorized into two: International Financial Centres and Offshore Financial Centres.

The full potential of an IFC is demonstrated by centers such as New York, London and Singapore where offshore business is conducted alongside large domestic financial intermediation. In most cases, offshore activities are not ring-fenced from domestic operations and they usually operate in the same regulatory and fiscal environment. IFCs have a highly matured and developed economy and sophisticated, deep and liquid domestic markets.

An Offshore Centre commonly refers to a smaller and less mature jurisdiction that attracts capital through a simple regulatory framework, minimum legal requirements for incorporation and operation, favourable tax treatment and stringent confidentiality requirements.

The provisions for setting up IFSC are laid down in Sec 18 of The Special Economic Zones Act, 2005. Accordingly, the Central Government may, subject to such guidelines as may be framed by the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and such other concerned authorities, as it deems fit, prescribe the requirements for setting up and the terms and conditions of the operation of Units in an International Financial Services Centre. Till date no terms and conditions has been prescribed by Central Government for setting up of International Financial service centre

OFFSHORE BANKING UNITS (OBU)

OBU are virtually foreign branches of Indian banks but located in India and would be exempt from cash reserve ratio (CRR) and statutory liquidity ratio (SLR). The Union Commerce Minister had first announced the setting up of OBUs in SEZ in the EXIM Policy 2002-07.The terms and conditions subject to which an Offshore Banking Unit may be set up and operated in a Special

Economic Zone shall be as specified in the Notification number FEMA 71/2002-RB dated 7th September, 2002 by the Reserve Bank of India, as amended from time to time.

SOFTWARE TECHNOLOGY PARKS OF INDIA

Software Technology Parks (STPs) are export oriented projects catering to the needs of software development for exports. The present provisions of the STP scheme are contained in Chapter 6 of the Foreign Trade Policy 2004-09. The procedures are included in Chapter 6 of the Handbook of Procedures and Appendices to the Handbook of procedures issued under the Foreign Trade Policy 2004-09. Software Technology Parks of India is an autonomous organization under Ministry of Communications and Information Technology, Govt. of India. New fiscal incentives offered under this scheme, infrastructure created by STPI and the investor friendly environment has contributed to a steep growth in the Software Exports from India.

4.2. The job opportunities for Chartered Accountants in the above entities are as follows:

a) Assistance in preparation of project report

   A project report outlining the economic and commercial viability of the project needs to be attached along with Form A i.e. Application for setting up a unit in Special Economic Zone.

b) Assistance in Necessary applications, compliances etc. with the Board of Approval, State Government, Development Commissioner, Approval Committee, etc.

c) Consultancy services for developing Special Economic Zones

d) Consultancy services for setting up units in Special Economic Zones,

e) Representation before Board of Approval on behalf of any person aggrieved by the order passed by the Approval Committee.

   Rule 55 of Special Economic Zones Rules, 2006 states that any person aggrieved by an order passed by the Approval Committee under section 15 of the Special Economic Zones Act, 2005 or against cancellation of Letter of Permission under section 16, may prefer an appeal to the Board in the Form J.

   Rule 61 of the Special Economic Zones Rules, 2006 states every appellant may appear before the Board in person or authorize one or more chartered accountants or company secretaries or cost accounts or legal practitioners or any of his or its officers to present his or its case before the Board.

f) Certification of reports – Form I (Annual performance reports for Units)

   There is a requirement under Rule 22 of the Special Economic Zones Rules, 2006 that the grant of exemptions, drawbacks and concession to the entrepreneur or developer of a Special economic zone will be subject to the condition that the Unit submits an Annual

Performance Report in Form I to the Development Commissioner who in turn will submit it to the Approval committee for his consideration. The information given in the form should be authenticated by the authorized signatory of the unit and certified by a Chartered Accountant.

g) Audit report under section 80-I(7)/80-IA(7)/80-IB/80-IC of the Income-tax Act, 1961 in Form 10CCB

h) Report under section 10A (5) and Section 10 B (5) of the Income-tax Act, 1961in FORM NO. 56F and Form No. 56 G respectively certifying that the deduction has been made in accordance with the corresponding section

i) Report under section 80LA(3) of the Income-tax Act, 1961 in Form No. 10CCF

j) Report on Annual performance of units -The information given in the formats for APRs should be authenticated by the authorized signatory of the unit and should be certified for its correctness by a Chartered Accountant with reference to the account records and registers maintained by the unit (Appendix 14 –I-F Handbook of procedures of Foreign Trade Policy)

k) Certificate on production and exports- DTA sale of Gem & Jewellery items will be permitted on annual basis by the Development Commissioners up to 10% of FOB value of exports during the preceding year subject to certain conditions. One such condition is that The application by an EOU has be submitted to DC concerned on yearly basis (licensing-year) giving the details of production and exports made during the preceding licensing year duly certified by a Chartered Accountant and endorsed by the jurisdictional Custom Authority.(Appendix 14- I-H Handbook of procedures of Foreign Trade Policy)

l) Certificate for CST reimbursements certifying receipt of the goods(Appendix 14- I-I Handbook of procedures of Foreign Trade Policy)- The Export Oriented Units (EOUs) and units in Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) will be entitled to full reimbursement of Central Sales Tax (CST) paid by them on purchases made from the Domestic Tariff Area (DTA), for production of goods and services as per EOU Scheme subject to certain conditions

The unit has to present its claim for reimbursement of CST in the prescribed form (Annexure - I) to the Development Commissioner of the SEZ concerned or the designated officer of the EHTP/STP.

Eligibility criteria for Chartered Accountants firms:

(i)In case of units located in the States of J&K, Orissa, North-Eastern States, Andaman and Nicobar Islands and Lakshadweep, the Chartered Accountant firm should be at least a Sole Proprietorship firm who should be an FCA and engaged full time with the firm.

(ii) In case of partnership Chartered Accountant firms located in the regions indicated in (i) above, should have at least two full time partners, one of whom should be an FCA.

(iii) In case of units located in other regions, the partnership Chartered Accountant firms should have at least one full time partner, who should be an FCA.

(iv) For the regions indicated in (i) above, the Chartered Accountant firm be located in the area where the unit is situated otherwise qualification of (iii) shall apply.

(Appendix 14-I-I **Handbook of procedures of Foreign Trade Policy**)

m) Assistance in registration with Software Technology Parks of India.

To establish a STP Unit, registration with STPI is required.

n) Certification of Statement of Exports made in the preceding licensing year in the format given in Appendix 26 for Annual Advance License purposes (Handbook of Procedures Vol 1-2004-09)

Advance licence can be applied for annual requirement for a particular product group by status holders and by the other exporters having at least past two years export performance. For the completion of the export obligation as stipulated in the condition of the licence, the exporters are required to submit proof of export obligation fulfillment

4.3. Reference Material

1. The Special Economic Zones Act, 2005
2. The Special Economic Zones Rules, 2006
3. Foreign Trade Policy and Procedures

4.4. Related Websites:

The following are useful links to various websites from which the professionals can get more information on the above subjects

Directorate General of Foreign Trade	http://dgftcom.nic.in/
Export/ Import	http://www.eximkey.com/
Ministry of Finance	http://finmin.nic.in/
Ministry of Commerce & Industry	http://commerce.nic.in/

Ministry of Company Affairs	http://www.mca.gov.in/
Income Tax, India	http://incometaxindia.gov.in/
Reserve Bank of India	http://www.rbi.org.in/
Special Economic Zones in India	http://www.sezindia.nic.in
Software Technology Park of India/ Electronic Hardware Technology Park	http://www.stpi.in/
Agri- Export Zones	
Agricultural and Processed Food Products Export Development Authority (APEDA)	http://www.apeda.com/
Free Trade and Warehousing Zones	
Free Trade Warehousing Private Limited (FTWPL)	http://www.ftwpl.com/
Bio Tech Parks In India	
Department of Biotechnology (DBT)) under the Ministry of Science and Technology	**http://dbtindia.nic.in/**
Special Economic zones in India	
Santacruz Electronics Export Processing Zone	http://www.seepz.com/
Kandla Special Economic Zone	http://www.kasez.com
Cochin Special Economic Zone	http://www.csez.com/
Madras Special Economic Zone	http://www.mepz.gov.in/
Visakhapatnam Special Economic Zone	http://www.vsez.gov.in/
Falta Special Economic Zone	http://www.fepz.com/
Noida Special Economic Zone	http://www.nsez.gov.in/
Surat Special Economic Zones	http://www.sursez.com/
Indore Special Economic Zone	http://www.sezindore.com/
Export Promotion Council	
Export Promotion Council for EOUs and SEZ Units	http://www.eouindia.gov.in/

Chapter 5

Trade Related Intellectual Property Rights (TRIPS)

5.1 Introduction

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of

time. Intellectual Property Rights mainly comprise trademarks, patents, copyrights, service marks, designs and confidential information (trade secrets), know-how etc. and the right to protection from passing off.

Intellectual Property Rights are of great importance for modern industry and commerce and, in many cases, they have a very important effect on the economy and on the very existence of a business entity. These comprise the right to control the use of technology and creative material, including rights in artistic, musical and literary work, and the right to prevent others from misusing certain marks, symbols and drawings and in distinguishing one from the other. The value of Intellectual Property cannot be defined in monetary terms; it is an intangible asset of any corporate entity.

Intellectual property rights can stimulate trade, investment, innovation and technology transfer for development. Intellectual property rights provide a vital incentive for investment in expensive biotechnological research. They give companies the safeguards necessary to encourage them to commercialise their products.

Need for protection of Intellectual property rights

In today's highly competitive business world, brands play very crucial role and protection of IPR is vitally important for pharmaceuticals, biotechnology and other such industries that require risky investments in innovation and discovery. Whenever a new product, service or an idea is created, there is every possibility that some one else may imitate it. Whether or not it could be imitated, depends on the fact whether IPR exists. There is little point in holding IPR unless they can be enforced against people who infringe or intend to infringe the same.

The projection of a product being based in its category now requires not just product positioning but also the positioning of the company manufacturing it. Corporate identity has, therefore, become very important. People buy products or services for what they mean more than what they can do. Similarly, ideas and innovations are required to be protected in order to avoid exploitation.

IPR also enable one to keep ahead of competitors and in order to be used effectively, it is absolutely essential to understand the complex and legal principles of IPR and apply them in practice.

5.2 Professional Opportunities

1. Registration Services - Registration of Patents, Trademarks, Copy rights & Geographical indications etc. at both national & international level
2. Representations before statutory authorities wherever permissible and possible.
3. Documentation - Drafting of Application for registration of the Intellectual property rights
4. Valuation of the Intellectual property rights and Strategic Advises related to Sale / Acquisitions of Intellectual property rights.
5. Advisory Services on Taxation of Intellectual property rights - Service Tax , Income Tax and Capital gains
6. Accounting of Intellectual property rights
7. Negotiating Royalty , Agency, Distribution, Franchise , Drafting licenses , non-disclosure agreements and Licensing agreements
8. Joint venture and Foreign Collaboration
9. Intellectual Property Management & Audit
10. Preparation for contesting opposition against application for registration of Intellectual property rights (in case of Patents, Trade marks, Geographical Indicators)
11. Registration of copyright protected works i.e. literary, artistic, cinematographic work and computer programs.
12. Patent and trademark litigation support including representation in hearings before the examiner, assistant, deputy, joint controller and controller of patents and assistant registrar and registrar of trademarks, filing oppositions and initiating infringement actions.
13. Function as an Arbitrator - resolve infringement matters - through Alternative Dispute Resolution when appropriate
14. Advisory on acquisition of intellectual property assets and a thorough due diligence review of complex ownership issues.
15. Advisory and assistance in negotiating and structuring intellectual property development agreements, including joint development agreements
16. Analyzing and assisting in strategically positioning Intellectual property rights to achieve maximum valuation and growth
17. Registration of Domain Names
18. Infringement Analysis Opinions and certifications
19. Advisory on assignments of Trademarks

5.3 Reference material

Agreement on Trade-Related Aspects of Intellectual Property Rights

http://www.wto.org/english/tratop_e/trips_e/trips_e.htm

The Patents Act, 1970

The Patents (Amendment) Act 2005

Patents (Amendment) Rules 2005

Patents (Amendment) Rules 2006

5.4 Related websites

Addresses of Authorities and Organizations dealing with Intellectual Property Rights

Controller General of Patents, Designs & Trade Marks
Bhoudhik Sampada Bhavan, Near Antop Hill Head Post Office, S.M. Road, Antop Hill, Mumbai-400037, **Phones : 022-24123311, Fax : 022-24123322** **Web site : www.ipindia.nic.in**
Patent Office
Address
The Patent Office, Intellectual Property Office Building, CP-2 Sector V, Salt Lake City,Kolkata-700091, **Phone :** 23671945, 1946, 1987, **FAX**-033-2367-1988, **Email**:- kolkata-patent@nic.in
The Patent Office, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai-600032, **Phone:** 044-22322824-25**, FAX:** 044-22322878,**Email:** chennai-patent@nic.in
The Patent Office, Intellectual Property Office Building, Plot No. 32, Sector 14, Dwarka, New Delhi-110075, **Phone :** 011-28081922-25**,FAX:**011-28081920-40, **Email:** delhi-patent@nic.in
Patent Office Boudhik Sampada Bhawan, S.M.Road, Near Antop Hill Post Office, Antop Hill, Mumbai - 400 037. **Phone :** 24137701, 24141026, 24150381, 24148165, 24171457 **FAX** : 24130387 **EMAIL**: mumbai-patent@nic.in

Designs Wing of the Patent Office
The Patent Office(Designs Wing), Intellectual Property Office,CP-2 Sector V, Salt Lake City, Kolkata-700091 Phone No. 033-23671945-46, 23671987 FAX-033-23671988, Email:- kolkata-patent@nic.in Note : Application for Design can also be received by any of the Patent Office located at New Delhi, Chennai & Mumbai.
Trade Marks Registry
Office of the Trade Marks Registry, Bhoudhik Sampada Bhavan, Near Antop Hill Head Post Office, S.M. Road, Antop Hill, Mumbai-400037, Email : tmrmum@bom5.vsnl.net.in
Trade Marks Registry, Intellectual Property Office Building,CP-2 Sector V, Salt Lake City, Kolkata 700091, Phone : 033-23675975, 23672848, 23677307,Fax : 033-23677311, Email : tmrcalbr@cal2.vsnl.net.in
Trade Marks Registry, Intellectual Property Office Building, Plot No. 32, Sector 14, Dwarka, New Delhi 110 0075, Phone : 011-28082915-16, Fax : 28082917, Email : tmrdel@vsnl.net.in
Trade Marks Registry, Intellectual Property Office Building G.S.T. Road, Guindy, Chennai 600032, Phone : 044-22321992,22322441-42,Fax:044-24314751 Email: tmrchebr@md3.vsnl.net.in
Trade Marks Registry, National Chambers, 15/27, 1st floor, Ashram Road, Ahmedabad 380009, Phone: 079-26580567, 26587193, Fax :079-26586763, Email : tmrahm@ad1.vsnl.net
Geographical Indications Registry
Geographical Indications Registry, Intellectual Property Office Building,G.S.T. Road, Guindy,

Chennai 600032, Phone : 044-22321992-93, 22321996, Fax: 044-22321991
Semiconductor Integrated Circuits Layout-Design Registry (SICLDR)
Semiconductor Integrated Circuits Layout-Design Registry Room No. 3014-3015 Department of Information Technology Electronics Niketan, 6 CGO Complex, Lodi Road New Delhi-110003.
Protection of Plant Varieties and Farmer's Rights
Protection of Plant Varieties and Farmer's Rights Authority Govt. of India, Minsitry of Agriculture, Department of Agriculture and Co-operation, NASC Complex, DPS Marg, Opp- Todapur, New Delhi-110 012 Email: plantauthority@gmail.com

Web sites of Authorities and Organizations dealing with Intellectual Property Rights

Patents Office	http://www.patentoffice.nic.in/ipr/patent/patents.htm
Copy Right Authority under the Ministry of Human Resource and Development	http://copyright.gov.in/
Trade Mark registry	http://www.patentoffice.nic.in/tmr_new/default.htm
Designs registration office	http://www.patentoffice.nic.in/ipr/design/designs.htm
Information on Geographical Indicators	http://www.patentoffice.nic.in/ipr/gi/geo_ind.htm
The Convention on Biological Diversity	http://www.biodiv.org/default.shtml
India's Clearing-House Mechanism site	http://envfor.nic.in/envis/envis.html
Ministry of Environment & Forests	http://envfor.nic.in/

Information on protection of plant varieties and farmers rights	http://www.plantauthority.in/
About Intellectual Property Rights	http://www.ipindia.nic.in/ipr/patent/pat_inaug.htm

Chapter 6

Advisory and related services to the State and Central Government

6.1 Advisory Services Related To State & National Govt. Budgets

1. Helping State and National Governments in their Budget preparation jobs.
2. Budgetary & Fiscal Management Advisory services to State and National Governments
3. Pre-Budget Economic Analysis of state of affairs and devising effecting Fiscal Management Tools
4. Vetting of Budget Decisions so that they remain WTO Compliant.

6.2 Drafting & Impact Study of Free Trade Agreements (FTA)

1. Helping the Governments in Pre-FTA & Post-FTA advocacy functions.
2. Representation on behalf of Industries and other stake holders with the Government officials
3. Drafting & Vetting of Free Trade Agreements.
4. Representation at WTO regarding notification and final approval on the FTAs.
5. Cross sectional Analysis of existing FTAs.
6. Conducting Impact Study of FTAs on behalf of industries, political parties and Governments
7. Representation before statutory authorities for seeking relief under the ROO / Settlement of Disputes / Safeguard Measure clauses of the relevant FTAs on behalf of either Domestic Industries or Exporters of the foreign countries

6.3 Representation for National Governments

1. Representation works for National Governments at WTO Dispute Settlement Forum.

6.4 Investigations for Determination of Rules of Origin

1. Investigations for various parameters specified under the Rules of Origin Agreement on behalf of Domestic or Foreign Governments.
2. Investigations for various parameters specified under the Rules of Origin clauses of various FTAs

7.5 Agreement on Agriculture

1. Can undertake research study works on behalf of Governments / International Agencies.
2. Can help Political parties in their strategy formulation.
3. Can do advocacy function on behalf of Governments.

Chapter 7

Academic/ research opportunities

7.1 Professional opportunities

1. Undertaking research studies on behalf of industries / governments and other international agencies on various subjects related and affecting the international trade relations.
2. Undertaking of sectoral / industry specific research studies for movement of stock prices of relevant industries dealing with trade in goods, services, IPRs, investments and competition issues.
3. Faculty positions in leading Academic, Research and Management institutions.

Chapter 8

Tax Havens

8.1 Introduction

Tax havens are legal jurisdictions that provide a no-tax or low-tax environment. A sizeable part of global financial activity is routed through tax havens.

There are several countries, territories, dependencies or jurisdictions providing different types of incentives and benefits for attracting foreign investment. They may also provide for certain conditions or extra costs for availing such benefits. Some of the decisions that have to be taken could be:

1. Whether to move to the tax haven?
2. Whether to open a branch or a subsidiary?
3. Whether to become a resident of the tax haven?
4. Whether it is possible to negotiate the tax benefits available?
5. Whether there are any potential legal ramifications of the decision?

These and many more decisions can only be taken with the help of professional experience and expertise.

The major benefits of tax havens are:

1. Protection from lawsuits
2. Financial Privacy
3. Regulatory Advantages
4. Maximisation of income by routing investment through tax haven entity
5. Asset Protection

8.2 Professional opportunities

Some of the benefits may not be available in all the tax havens or may be available on conditions like giving employment opportunities to local people. Professional judgement is hence required.

Professionals are also required in evaluating and appraising the performance of an organisation in a particular tax haven. An analysis of future opportunities available and the opportunities available elsewhere may suggest transfer of operations to another location either in full or in part. Any oncoming political threat, fiscal crisis, competition or restrictions may call for immediate shifting of operations to another country.

The structure of the offshore organisation, the type of the entity and the functions to be transferred to that organisation should be decided with the help of professionals.

Services that can be rendered by professionals in this area are:

1. Any enterprise intending to expand and invest has to make a cost benefit analysis before selecting the location for expansion and investment. This requires knowledge of the incentives and laws and regulations of various countries. While tax havens may provide high incentives in the form of low taxes or no taxes, there could be other demotivating factors like political crisis, stringent disclosure requirements, levy of heavy fees, etc. Services of a professional are pertinent for the overall analysis of the investment decision.
2. Following the law in a foreign land is all the more necessary to avoid any legal complications. Professionals could be hired to ensure legal and other regulatory compliances.
3. The incentive of all business is maximization of profit. Using the tax incentives and avoidance of tax to the maximum extent possible legally would be one of the ways towards this goal. Professionals, with their knowledge and experience can assist organizations in this respect.
4. Various treaties and agreements between various countries; the extra burden imposed by our country for investing abroad in tax havens; comparison of the local and foreign tax incentives/holidays available need to be analysed for the purpose of carrying on of business in a particular location.

8.3 Reference Material

Information on Tax Havens- http://en.wikipedia.org/wiki/Tax_haven

8.4 Related Websites

Some of the tax havens and their websites are:

1 Andorra – a small country in Western Europe (www.**andorra**.com, http://www.govern.ad/);

2 Anguilla – a group of islands in the Caribbean Sea, an overseas territory of the UK (http://www.gov.ai/);

3 Antigua and Barbuda – a group of islands in the Caribbean Sea (www.ab.gov.ag, www.**antigua**.gov.ag, www.**antigua**barbuda.gov.ag);

Aruba – a Caribbean island, part of the Kingdom of the Netherlands (www.**aruba**.com);

The Bahamas – a group of islands off the coast of Florida (www.**bahamas**.gov.bs/);

Bahrain – an group of islands off the coast of Saudi Arabia (www.**bahrain**.gov.bh);

Barbados – a Caribbean island (www.**barbados**.org/govt.htm);

Belize – a small country in Central America (www.**belize**.gov.bz);

British Virgin Islands – a group of islands in the Caribbean Sea, an overseas territory of the UK (www.bvi.org.uk);

Cyprus (www.**cyprus**.gov.cy/)

Cook Islands – a group of islands in the South Pacific Ocean, self-governing but in free association with New Zealand (www.**cook**-**islands**.gov.ck/);

Delaware (**delaware**.gov/)

Dominica – a Caribbean island (www.avirtual**dominica**.com/**government**.cfm);

Gibraltar – a small country in Southwestern Europe, an overseas territory of the UK (www.gibraltar.gov.gi/);

Grenada – a group of islands in the Caribbean Sea (www.gov.gd/);

Guernsey/Sark/Alderney – a group of islands in the English Channel, a dependency of the British Crown (www.gov.gg/, www.**sark**.gov.gg, www.**alderney**.gov.gg);

Isle of Man – an island in the Irish Sea, a dependency of the British Crown (www.gov.im/);

Liberia – a West African country (http://www.state.gov/r/pa/ei/bgn/6618.htm);

Liechtenstein – a small country in Western Europe (http://www.liechtenstein.li/en/eliechtenstein_main_sites/portal_fuerstentum_liechtenstein/fl-staat-staat/fl-staat-regierung.htm);

Maldives – a group of islands in the Indian Ocean (www.the**maldives**.com/**government**/);

Malta (www.gov.mt/)

Marshall Islands – a group of islands in the Pacific Ocean (www.rmiembassyus.org/);

Mauritius – a financial regime that has a number of the key characteristics of a tax haven (www.gov.mu/);

Monaco – a small country in Western Europe (www.**monaco**.gouv.mc/);

Montserrat – a Caribbean island, an overseas territory of the UK (www.gov.ms/);

Nauru – a small South Pacific island (www.dfat.gov.au/geo/**nauru**/**nauru**_brief.html);

Netherlands Antilles – a group of islands in the Caribbean Sea, part of the Kingdom of the Netherlands (www.gov.an/);

Niue – a small South Pacific island, self-governing but in free association with New Zealand (www.gov.nu/);

Panama – a country in Central America (www.presidencia.gob.pa/, www.historycentral.com/NationbyNation/**Panama**/Gov.html);

Samoa – a group of islands in the South Pacific Ocean (www.govt.ws/);

31 Seychelles – a group of islands in the Indian Ocean (www.virtual**seychelles**.sc/gover/mfa.htm);

32 St. Kitts and Nevis – a group of islands in the Caribbean Sea (www.gov.kn/);

33 St. Lucia – a Caribbean island (www.**stlucia**.gov.lc/);

34 St. Vincent and the Grenadines – a group of islands in the Caribbean Sea (www.gov.vc/);

35 Switzerland (http://www.swissworld.org/eng/swissworld.html?siteSect=700, www.historycentral.com/nationbynation/**Switzerland**/Gov.html)

36 Tonga – a group of islands in the South Pacific Ocean (www.pmo.gov.to/);

37 Turks and Caicos – a group of islands in the North Atlantic Ocean, an overseas territory of the UK (www.**turks**and**caicos**islands.gov.tc/);

38 Uruguay (www.presidencia.gub.uy/)

39 US Virgin Islands – a group of islands in the Caribbean Sea, an external territory of the US (www.statelocalgov.net/other-vi.htm);

40 Vanuatu – a group of islands in the South Pacific Ocean (www.**vanuatugovernment**.gov.vu/)

Chapter 9

International Taxation

9.1 Introduction

Section 92B of the Income Tax Act, 1961 provides a broad definition of an international transaction, which is to be read with the definition of transactions given in section 92F.

Accordingly, an international transaction is essentially a cross border transaction between associated enterprises in any sort of property, whether tangible or intangible, or in the provision of services, lending of money etc. At least one of the parties to the transaction must be a non-resident. The definition also covers a transaction between two non-residents where for example, one of them has a permanent establishment whose income is taxable in India.

Sub-section (2), of section 92B extends the scope of the definition of international transaction by providing that a transaction entered into with an unrelated person shall be deemed to be a transaction with an associated enterprise, if there exists a prior agreement in relation to the transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined by the associated enterprise.

An illustration of such a transaction could be where the assessee, being an enterprise resident in India, exports goods to an unrelated person abroad, and there is a separate arrangement or agreement between the unrelated person and an associated enterprise which influences the price at which the goods are exported. In such a case the transaction with the unrelated enterprise will also be subject to transfer pricing regulations.

9.2 Professional Opportunities

Guidance and consultancy services related to

a) Taxation of Non- resident Indians

Non-resident means a person who is not a resident and includes a person who is not ordinarily resident within the meaning of clause (6) of section 6 of the Income Tax Act,1961 (as defined in sec 2 (30)

b) Transfer pricing

Commercial transactions between the different parts of the multinational groups may not be subject to the same market forces shaping relations between the two independent firms. One party transfers to another goods or services, for a price. That price is known as transfer price. This may be arbitrary and dictated, with no relation to cost and added value, diverge from the market forces. Transfer price is, thus, a price which represents the value of good; or services between independently operating units of an organisation. But, the expression transfer pricing generally refers to prices of transactions between associated enterprises which may take place under conditions differing from those taking place between independent enterprises. It refers to the value attached to transfers of goods, services and technology between related entities. It also refers to the value attached to transfers between unrelated parties which are controlled by a common entity.

c) Double Taxation Avoidance agreements

The Double Tax Avoidance Agreement (DTAA) is essentially a bilateral agreement entered into between two countries. The basic objective is to promote and foster economic trade and investment between two Countries by avoiding double taxation

9.3 Reference Materials

a) Income Tax Act, 1961

b) Double Taxation Avoidance Agreements

9.4 Related websites

a) National website of the Income Tax Department of India-
http://www.incometaxindia.gov.in/

Chapter 10

Part A- Inbound and Outbound Investments and various Rules and Regulations under FEMA, 1999

10.1 Introduction

The Foreign Exchange Management Act, 1999 extends to the whole of India
The Act also applies to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention there under committed outside India by any person to whom this Act applies.
With the advent of FEMA, entire focus of the government of India and the Reserve Bank of India has suddenly shifted to control and management of foreign investments and flow of funds to suit best interests of the country.

Though there is almost complete convertibility on Current Account Transactions except few prohibited/ restricted items under the Current Account Regulations, the Reserve Bank of India has been consciously regulating the flow of Capital Account Transactions (both inbound as well as outbound) *on real time basis* to meet goals of canalizing investment towards desired sectors of the economy and simultaneously addressing issue of the national security.

10.2 Professional opportunities

a) Consultancy on compliance with FEMA rules and regulations

b) Representation of party- Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000-Any applicant who has filed an appeal before the Special Director (Appeals) under section 17 of the Act, may appoint a legal practitioner or a charted accountant to appear and plead and act on his behalf before the Special Director (Appeal) under the Act

c) Certification. A chartered Accountants certificate is required under the following Regulations

- FEMA 3 - Borrowing and lending in Foreign Exchange
- FEMA 5 - Deposits
- FEMA 12- Insurance
- FEMA 13- Remittance of Indian Assets by Non-residents
- FEMA 22- Establishment of branch etc. in India
- FEMA 23- Export of goods and services (including Project Exports)
- FEMA 25- Foreign exchange derivative contracts

- FEMA 120- Investment in Joint Ventures (Business Ventures) abroad by Residents
- Current account rules
- Import of goods and services

d) FEMA compliance Audit

10.3 Reference material

FEMA rules and Regulations

10.4Related websites

Reserve Bank of India- http://www.rbi.org.in/home.aspx

Part B- Trade Related Investment Measures (TRIMS)

10.5 Introduction

The Trade Related Investment Measures Agreement came into effect on 1 January 1995 as part of the Uruguay Round negotiations. It addressed investment measures that were trade related and which violated Article III (National Treatment) or Article XI (general elimination of quantitative restrictions). Basically it prohibited member countries making the approval of investment conditional on compliance with laws, policies or administrative regulations that favoured domestic products.

Illustrative list of prohibited TRIMs

TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

- the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or
- That an enterprise's purchase or use of imported products be limited to an amount related to the volume or value of local products that it exports.

TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or

enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

- the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;
- the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or
- the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production

10.6 Professional opportunities

1. Vetting / Drafting of FDI agreements and field study works.
2. Vetting of Counter Guarantee Agreements signed by National & State Govts.
3. Advisory services related to Foreign Collaborations, Joint Ventures and Acquisitions.
4. Analysis of political and other factors affecting investment decisions of foreign parties.
5. Representation before statutory authorities on behalf of either the domestic or foreign parties wherever permissible.
6. Acting as Arbitrators when dispute arises.
7. Valuation of Tangible and Intagible assets for settlement of trade disputes or initial /
8. Subsequent investments
9. Representation before WTO Dispute Settlement Forum when disputes goes to their
10. Jurisdictions
11. Investigation Services when foreign parties require background verification of the
12. Domestic parties and vice versa when joint ventures occurred.
13. Advising Corporates about Global FDI policies adopted in different countries and
14. Selection of suitable partners for joint ventures
15. Financial Evaluation of FDI proposals on behalf of industries and Government.

10.7 Reference Material

Agreement on Trade Related Measures

10.8 Related websites

WTO- http://www.wto.org/English/docs_e/legal_e/18-trims.pdf

Ministry of Commerce- http://commerce.nic.in/wtotrims.htm

Chapter 11

Cross border Mergers and Acquisitions

11.1 Introduction

The phrase mergers and acquisitions (abbreviated M&A) refers to the aspect of corporate strategy, corporate finance and management dealing with the buying, selling and combining of different companies.

Merger is a tool used by companies for the purpose of expanding their operations often aiming at an increase of their long term profitability.

Mergers and acquisitions (M&A) and corporate restructuring are a big part of the corporate finance world. Investment bankers arrange M&A transactions, which bring separate companies together to form larger ones. When they're not creating big companies from smaller ones, corporate finance deals do the reverse and break up companies through spin offs, carve-outs or tracking stocks.

International investment opportunities have in-creased while regulatory restrictions on capital markets have been eased and the market for corporate control has become more integrated.

Consequently, the international acquisition activity has increased in both absolute and relative terms over the last decades leading to a significant rise of the proportion of international to domestic merger activity, particularly at the end of the 1990s. As more and more companies consider international diversification as a strategic option for their further growth, the question arises which valuation consequences accompany cross-border acquisitions.

Furthermore, it is to be analyzed whether these consequences differ systematically from domestic acquisitions and what could be possible value drivers in these cases.

11.2 Professional opportunities

1. Financial Due Diligence
2. Valuation of Business

3. Advisory on Cash repatriation
4. Equity financing
5. Banking and Finance Regulatory Issues
6. IPR Valuation
7. Advisory on Debt structuring
8. Advisory on Income flows and their taxability
9. Analysis and advisory on Financing options
10. Regulatory approvals and representations before concerned authorities:
    Competition authority
    Stock exchange
    Lenders
    Foreign investment authority
    Sector regulators
11. Advisory on FIPB approval
12. Advisory on RBI approval
13. Drafting of agreements which form a necessary part of M&A exercise
    a. Joint venture agreements
    b. Share transfer agreements
    c. Asset transfer agreements
14. Corporate re organizations and restructurings
    a. Diagnosis
    b. Realization
    c. Formalization
15. Defining the scope of the transaction
16. Assistance with negotiations
17. Joint Ventures
    a. Structuring: definition of objectives and contributions of the partners
    b. Operations: management, operational and oversight structures, contractual relationships between the partners
    c. Exit alternatives: conflict resolution procedures, dissolution and liquidation of the joint venture
18. Competitive issues
    a. defining relevant product and geographic markets,
    b. measuring market concentration,
    c. evaluating conditions of entry and efficiencies, and
    d. Assessing the competitive impact of proposed transactions.
19. Measuring the effect of merger on prices

11.3 Reference Material

1. Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000
2. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000
3. Sections 77A, 81(1A), 108 A to G, 391-394, 372A , 494 of Companies Act, 1956
   (Note: Section 372A Companies Act, 1956 – Inter corporate loans & investment beyond 60% of paid up capital and free reserves or 100% of reserves to be approved by shareholders)
4. Income Tax Act, 1961
5. Double Taxation Avoidance Agreements
6. Monopolies and Restrictive Trade Practices Act, 1969 / Competition Act, 2002 (Partially notified)
7. SEBI Regulations
8. Stock Exchange – listing agreement
9. Foreign Exchange Management Act,1999
10. Stamp Duty Acts
11. Section 25FF of Industrial Disputes Act 1949 (Compensation to workmen in case of transfer of undertakings)

11.4 Related websites

Addresses of Web sites of Authorities and Organisation relevant for cross border M&A

1	**Ministry of Corporate Affairs, Government of India**	**http://www.mca.gov.in**
2	**Securities and Exchange Board of India**	**http://www.sebi.gov.in/**
3	**Reserve Bank of India**	**http://www.rbi.org.in/**

Chapter 12

Competition law

12.1 Introduction

The Monopolies and Restrictive Trade Practices Act, 1969 is currently the competition law in force on in India. The Competition Act, 2002 is yet to take effect in all practical terms.

12.2 Professional opportunities

Services that can be rendered by professionals in the field of Competition law are:

5. Advisory
    a. Any enterprise intending to set up business in India would like to ensure that such setting up is not against the competition law (currently the Monopolies and Restrictive Trade Practices Act, 1969)
    b. Any enterprise intending to set up a branch or subsidiary in a foreign country would like to ensure that the competition law of that country is not defaulted
    c. During the process of any inquiry or investigation into any trade practice by an enterprise, the professionals could give advisory services to such enterprise

6. Others
    a. When an agreement is being drafted, the parties to the agreement have to ensure that the same is not anti competitive. If the agreement is restrictive in nature, it may be necessary to get the same registered as per the law. The professionals could help the parties in the drafting and registration of the agreement
    b. Where any person is effected by any monopolistic, restrictive or unfair trade practice of any other person, he may approach a professional for applying to the Commission for an inquiry or investigation into such practice.
    c. Information to be submitted to the Commission
    d. Appeals to be made to the Supreme Court against any decision or order of the Commission or of the Central Government
    e. During the course of an inquiry before the Commission, where it has to be proved that an enterprise is carrying on or is about to carry on, a monopolistic, restrictive or unfair trade practice, any person may prove that such trade practice is prejudicial to public interest or to the interest of any trader or class of traders or traders generally or of any consumer or consumers generally. On such proof, the

Commission may grant temporary injunction. The services of professionals would help in the process.

f. Calculations for determining whether the definitions of group, interconnected undertakings, dominant undertaking, etc. are attracted
g. To appear before the Commission where during the course of any proceeding, representatives are allowed to be present.
h. To ensure compliance with the competition laws in the general conduct of business.

Under the Competition Act, 2002, similar services can be rendered by professionals, like giving notice to the Commission on proposed combinations, calculations for determining whether an acquisition, amalgamation or merger is a combination or not, etc.

12.3 Reference Material

a) The Monopolies and Restrictive Trade Practices Act, 1969
b) The Competition Act, 2002

12.4 Related Websites

1. The International Competition Network

   http://www.internationalcompetitionnetwork.org/

2. International Bar Association Global Competition Forum-

   http://www.globalcompetitionforum.org

3. Competition Commission of India

   http://www.competitioncommission.gov.in/

4. The Office of the Director General of Investigation and Registration

   http://www.mca.gov.in/MinistryWebsite/dca/mcaoffices/dgir.html

5. Monopolies and Restrictive Trade Practices

   http://www.mca.gov.in/MinistryWebsite/dca/mcaoffices/mrtpc.html

International Organizations

1. Andean Community, Andean Competition Portal http://www.comunidadandina.org/competencia/
2. Asia-Pacific Economic Cooperation (APEC) Competition Policy Database http://www.apecsec.org.sg/loadall.htm?http://www.apecsec.org.sg/committee/competition.html
3. Business and Industry Advisory Committee for the OECD (BIAC) http://www.biac.org/
4. Economic Commission for Latin America and the Caribbean (ELAC) http://www.eclac.cl/default.asp?idioma=IN
5. Free Trade Area of Americas(FTAA)- Competition Policy http://www.ftaa-alca.org/ngroups/ngcomp_e.asp
6. International Chamber of Commerce -http://www.iccwbo.org/
7. International Trade Centre UNCTAD/WTO- http://www.intracen.org/
8. The International Trade Forum- The Magazine of the International Trade Centre http://www.tradeforum.org/
9. International Monetary Fund (IMF) - http://www.imf.org/
10. North Atlantic Treaty Organisation (NATO) http://www.nato.int/
11. OECD. Organisation For Economic Co-operation And Development, Competition Law And Policy -http://www.oecd.org/daf/clp
12. Organisation Of American States (OAS) Trade Unit -http://www.oas.org/
13. Trade and Development Centre -http://www.itd.org/
14. The World Bank Institute- http://www.worldbank.org/wbi/regulation/index.html
15. United Nation Conference on Trade and Development (UNCTAD) http://www.unctad.org/competition
16. United Nations Commission on International Trade Law (UNCITRAL) http://www.uncitral.org/
17. United Nations Economic and Social Development -http://www.un.org/esa/
18. United Nations Industrial Development Organization (UNIDO)- http://www.unido.org/
19. Western European Union (WEU) - http://www.weu.int/
20. World Trade Organization (WTO)- http://www.wto.org/
21. World Intellectual Property Organisation -http://www.wipo.org/index.html.en
22. World Trade Point Federation -http://www.wtpfed.org/

Chapter 13

Knowledge Process Outsourcing (KPO) sector

13.1 Introduction

The basic idea for outsourcing was first developed by Ross Perot, who was the founder of Electronic Data Systems. The basic goal of EDS was to help companies manage their IT departments. EDS would sell the information that was related to information technology, and their clients would pay them on a monthly basis.

An evolution of BPO (Business Process Outsourcing), Knowledge Process Outsourcing (KPO) involves offshoring of knowledge intensive business processes that require specialised domain expertise, thus delivering high value to organisations by providing business expertise rather than just process expertise. These processes demand advanced analytical and specialized skill of knowledge workers that have domain experience to their credit. The opportunities for professionals are available both as a KPO service provider as well as services to KPOs.

The requirements for rendering such services would be maintaining higher quality standards, investment in KPO infrastructure, the lack of talent pool, requirement of higher level of control, confidentiality and enhanced risk management. Also it has reduced costs while maintaining the same level of quality or service. The nature of work requires advanced analytical and specialized skills.

There are no limitations on location when it comes to outsourcing, and it can be done in various countries around the world. When the practice of outsourcing is conducted between countries, this is referred to as being offshore outsourcing.

While outsourcing has traditionally been connected to countries such as the United States and the United Kingdom, it is very likely that companies based in China and the European Union will begin outsourcing as well. It is very likely that these companies will begin placing tremendous demands on their governments to avoid any military conflicts that may weaken their ability to earn profits.

Given the large talent pool, friendly government policies, quality IT training and low labour costs, Indian professionals have an added advantage to form KPOs over the professionals in other countries.

While KPO offers a number of powerful advantages that professionals will want to take advantage of, it is not without challenges.

Those who wish to invest in KPO will need to spend more money on building up the necessary infrastructure. In addition to this, they will need to deal with finding the right workers, and confidentiality is an issue that must be taken seriously as well. The implementation of KPO can be difficult, and it must be implemented in a professional services environment.

Any operation that is carried out for KPO must be high in quality, because the clients can afford to have less than the very best. Performance issues must be taken into consideration as well. Even if all these things have been accomplished successfully, continuous monitoring and feedback will be needed. Attrition is another important issue. It is critical for companies to be able to retain the employees they hire.

As the BPO and KPO industry has to deal on an international level, it is exposed to international laws and regulations characterized by intense litigation.

Skills required for Indian chartered accountants:

1. Accounting procedures followed by companies in other countries.
2. Knowledge of accounting related softwares like, Quick Books, MYOB, SAGE and other accounting solutions. These are some softwares used as per international standards.
3. Skills in using tax return softwares i.e. Ultra Tax or Irish used in preparing Tax Returns and annual accounts for individuals, corporations or private organizations.
4. Computer skills
5. High level of conceptualization
6. Research skills
7. Comfortable with databases and mathematically oriented
8. Able to adapt to the latest technology and use of tools and software

13.2 Professional opportunities

As a KPO, professionals can render services in the following ways:

1. Finance and accounts – services can be rendered in areas similar to the following:

    - Accounting and data preparation
    - Maintenance of books and records
    - Accounts receivables
    - Debtors management
    - Accounts payables
    - Fixed assets accounting
    - Asset accounting management
    - Reconciliations
    - Expense analysis
    - General Ledger maintenance
    - Payroll management
    - Cash management

- Internal Financial Reporting
- Different types of reports on daily basis

2. Research & Development – Research could be through web based market research solutions, secondary research methods, Government Publications, General Press, Industry Journals, Trade Associations, Public Company Filings, Investment Brokerages and Information Services, Newsgroups and UseNet. Other related services could be:

    - Data search and collection
    - Managing data
    - Business Analysis
    - Data Analysis
    - Network Management
    - Business & Market Research
    - Equity research
    - Research on fixed income markets
    - Intellectual Property (IP) Research
    - Legal research
    - Market Analysis

3. Financial Analysis

    - Forecasting, Budgetary and decision support
    - Consolidation and analysis
    - MIS reporting
    - Financial planning and analysis
    - Credit rating analysis
    - Examination and interpretation of financial statements
    - Event analysis
    - Risk management
    - Treasury and investment management
    - Financial research and investigations
    - Investment analysis

4. Consulting services

    - Financial modeling
    - Deal profiles

- Verification
- Assistance and guidance in transfer of operations
- Contribution towards continuous improvement of processes

5. Services pertaining to legal matters –

    - Advice on the formation of e-Contracts
    - Legal research,
    - Documentation, reviewing documents and agreements, litigation matters, reporting requirements (drafting and reviewing reports required under various laws)
    - Advice on existing and developing legal and regulatory requirements domestic and international
    - Domain name registration
    - Advice on the risks and liabilities involved in electronic linkage to third party sites and the formation of third party alliances
    - Regulatory review of Web site content
    - Agreements for the licensing of software and the provision of support services to a licensee in connection with software licensing

6. Education and related services – knowledge is power and the only thing that increases with giving. Some of related services that professionals can contribute in are:

    - Education
    - Training & Consultancy

7. Other services

    - Valuation of companies
    - Evaluation of potential Mergers and acquisitions
    - Preparation of company profiles/reports
    - Transitioning financial information between accounting standards
    - Tracking of stock prices
    - Internal audit
    - Supporting internal activities
    - Transfer pricing

13.3 Related Websites

1. National Association of Software and Service Companies - http://www.nasscom.in/Default.aspx?
2. Department of Information Technology, Ministry of Communications and Information Technology - http://www.mit.gov.in/
3. KPO Asia- www.kpoasia.com/
4. BPO India- http://www.bpoindia.org

Chapter 14
Corporate Governance

14.1 Introduction

Corporate Governance is a broad concept and has been defined and understood differently by different groups and at different points of time.

The earliest definition of Corporate Governance is from the Economist and Noble laureate Milton Friedman. According to him “Corporate Governance is to conduct the business in accordance with owner or shareholders’ desires, which generally will be to make as much money as possible, while conforming to the basic rules of the society embodied in law and local customs”.

The Cadbury Committee report defines it as “the system by which companies are directed and controlled”. It is generally understood as the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations.”

The Kumar Mangalam Birla Committee report defines it as“…fundamental objective of corporate governance is the ‘enhancement of the long-term shareholder value while at the same time protecting the interests of other stakeholders.”

Hence, Corporate Governance can be understood to be a systematic process by which Companies are directed & controlled to ensure that they are managed in the manner that meets stakeholders’ aspirations & societal expectation. This leads to the corporate governance philosophies of: Trusteeship; Transparency; Empowerment & Accountability; Control and Ethical Corporate Behavior

14.2 Professional opportunities

1. Guidance in designing Code of Corporate Governance

2. Guidance in designing Risk Management Framework
3. Guidance in designing Internal control framework
4. Guidance in designing Whistle blower policy
5. Internal Audit of corporate governance
6. Statutory auditor's Certificate regarding compliance of conditions of corporate governance as stipulated in sub-clause VII(1) of clause 49

14.3 Related Websites

1. National Foundation for Corporate Governance - http://www.nfcgindia.org/
2. European Corporate Governance Institute - http://www.ecgi.org/
3. World Council for Corporate Governance -http://www.wcfcg.net
4. Independent Director Initiative -http://www.independentdirector.co.uk/
5. Securities and Exchange Board of India-http://www.sebi.gov.in/
6. Bombay Stock Exchange Limited- http://www.bseindia.com/
7. International Trade Administration-http://www.ita.doc.gov/goodgovernance/
8. Organisation for Economic Co-operation and Development- http://www.oecd.org/
9. Corporate governance network- http://www.corpgov.net/

Chapter 15

Business Valuation

A business valuation determines the price that a hypothetical buyer would pay for a business under a given set of circumstances. A valuation estimates the complex economic benefits that arise from combining a group of physical assets with a group of intangible assets of the business as a going concern. The valuation, which is part art and part science, estimates the price that hypothetical informed buyers and sellers would negotiate at arms length for an entire business or a partial equity interest.

The following are some of the issues that should be considered in a valuation

a) The nature and history of the business
b) The general economic outlook and the conditions of the specific industry
c) The book value of the stock
d) The financial condition of the company
e) The Management of the company
f) The dividend paying capacity of the company
g) Whether the company has goodwill or other intangible value
h) Previous sales of stock
i) The market price of publicly traded companies who are engaged in the same or similar lines of business

Typical Valuation Reports include:

a) Limited Scope Valuations

Limited Scope Calculation of Value reports are particularly useful for small businesses whose owners are considering the sale of the business.

b) Formal Valuations

A Formal Valuation report is the next step up from a Limited Scope Valuation and involves more detailed analysis with market research to support the end result. The final suggested value is not a range, but rather a distilled value of the business. Formal Valuations are used for businesses which are contemplating an uncontested sale of their shares in the business

c) Mergers and Acquisitions

This type of report is used where shareholders or interested parties in the company want to obtain the value of a business. It typically takes longer than with Limited Scope or Formal Valuations to complete the analysis, interviews and written report that are involved in this type of valuation, reflecting the more complex and detailed analysis that needs to be done to arrive at the business value in this context.

d) Comprehensive Valuations

These valuation reports are much more comprehensive and detailed than the other types of valuation reports and because of their purpose require extensive documentation. The valuators involved in these reports are litigation-trained and accredited business valuators who can be made available to provide testimony and litigation support to assist with critiquing opposing valuation testimony.

Chapter 16

Limited Liability Partnership

The increasing role of the services sector and growing number of professionals has given rise to the need for a new corporate form – limited liability partnerships to enable professional expertise (especially company secretaries, chartered accountants and advocates), to organise and provide a range of services to the corporate sector in a comprehensive and efficient manner and face global competition.Limited liability partnerships fill the gap between corporates and general partnerships

The Naresh Chandra committee on "Regulation of Private Companies and Partnership" felt the need for professionals to consolidate and grow to compete with the best and the biggest in the world. The committee agreed to the suggestion of introducing the concept of 'limited liability', as per prevalent international norms, in India for partnership firms of professionals.

The Committee felt that this would encourage quality talent to be attracted to the profession, and allow faster growth and consolidation of firms, by reducing the fear of unlimited liability for all partners. The Committee recommended that the Government should consider amending the Partnership Act to provide for partnerships with limited liability, especially for professions which do not allow their members to provide services as a corporate body.

Thus, the seeds for LLP were sown. The ministry of Company Affairs then initiated a wide based consultative process to allow ideas, comments and suggestions to flow in from all quarters on the proposals for a Limited Liability Partnership (LLP) Law. It placed the Concept Paper on LLP Law along with explanatory notes on chapters, on the website of the Ministry of Company Affairs so that all interested may not only express their opinions on the concepts involved but also suggest formulations. The bill was introduced in the Rajya Sabha on 15th December 2006.

The Limited Liability Partnership Bill 2006 is believed to be a path-breaking legislation.

A limited liability partnership (LLP), which is a separate legal person, will be liable to the third parties independent of the other partners. Therefore it is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operations, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital.

The proposed Bill does not restrict the benefit of LLP structure only to certain classes of professionals and will be available for use by any enterprise that fulfils the requirements of this Act. This is also seen as a key enabler to encourage "Innovation" as it will allow the Directors to have a limited liability when they partner as angel or capital ventures.

The Bill has 14 chapters containing 73 clauses and 4 schedules. The objective of the Bill is to make provisions for the formation and regulation of LLPs.

The provisions of this proposed Act shall be in addition to the existing laws and shall not derogate any existing law.

16.2 Professional Opportunities

1. Determining suitability of business for formation of LLP
2. Guidance in formation
3. Providing a statement that all requirements of the LLP Act & related rules have been complied in respect of incorporation & other related matters..
4. Drafting of LLP agreement
5. Advice on conversion from other forms to LLP
6. Maintenance of accounts
7. Audit of LLP

Chapter 17
Internal Audit

"Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes."

Internal Auditor can make:

- An objective assessment of operations and share ideas for best practices.
- Provide guidance for improving controls, processes and procedures, performance, and risk management.

Thus, internal audit activity can play an important role and support the board and management in fulfilling an essential component of their governance mechanisms. The internal auditor furnishes analysis, appraisals, recommendations, counsel and information concerning the activities reviewed. The internal auditor can suggest ways of reducing costs, enhancing revenues, and improving profits.

Internal auditors play an important role in evaluating the effectiveness of control systems. As an independent function reporting to the top management, Internal Audit is able to assess the internal control systems implemented by the organization and contribute to ongoing effectiveness. As such internal audit often plays a significant monitoring role. In order to preserve its independence of judgment Internal Audit should not take any direct responsibility in designing, establishing, or maintaining the controls it is supposed to evaluate. It may only advise on potential improvement to be made

Specific Internal audit activities

- Internal audit requirements under Companies (Auditor's Report) Order, 2003 (CARO,2003)
- Internal audit of Enterprise risk management process
- Internal audit of corporate governance
- Internal audit of Depository Participants

- Internal audit in Banks
- Internal audit of treasury operations

Types of Internal Audit

a) Operational Audits:

These audits examine the use of resources to determine if resources are being used in the most effective and efficient manner to fulfill the organization's mission and objectives

b) Financial Audits:

These audits review accounting and financial transactions to determine if commitments, authorizations, and receipt and disbursement of funds are properly and accurately recorded and reported. This type of audit also determines if there are sufficient controls over cash and other assets and that adequate process controls exist over the acquisition and use of resources. Unlike external financial audits, internal financial audits do not prepare or express professional opinions on the financial statements fairness.

c) Compliance Audits:

These audits determine if entities are complying with applicable laws, regulations, policies and procedures Compliance audit would entail:

- Gathering information about laws, regulations, and other compliance requirements.
- Understanding limitations of auditing in detecting illegal acts and abuse.
- Assessing the risk that significant illegal acts could occur.
- The auditor would design and perform procedures based on risk assessment that would provide reasonable assurance of detecting significant illegal acts.

d) Information Systems (IS) Audits:

These audits review the internal control environment of automated information processing systems and how people use these systems. The audits usually evaluate system input, output; processing controls; backup and recovery plans; system security; and computer facilities. These audits may review existing, as well as, developing systems.

Information System reviews include the following:

- Reviews of existing or new systems, before and after implementation, to ensure their security and that they meet the needs of users;
- Project management reviews to ensure controls are in place to mitigate project risks or to identify the strengths and improvements required for future projects;

- Organizational or operational reviews to ensure the organizations goals and objectives will be achieved; and,
- Specific technology reviews to ensure security and controls are in place

e) Investigative audits

Investigative assignments scrutinize allegations of wrongdoing or breaches of standards of conduct. Allegations may be internal or external to the organisation and may examine the records of individuals, organizations and firms with agreements between them and the organisation
Reasons for conducting Investigation:

- Internal theft,
- misappropriation of assets,
- conflicts of interest

Co-ordination for this audit is usually at the highest level in the organisation like with senior management or security department. Investigative audits differ from other audits because they are normally conducted without first notifying the personnel who may be affected by the findings

f) Management Audit:

Management audit is a more recent concept. It focuses on results, evaluating the effectiveness and suitability of controls by challenging underlying rules, procedures and methods. Management audits, which are generally performed internally, are compliance audits plus cause-and-effect analysis. When performed correctly, they are potentially the most useful of the evaluation methods, because they result in change

Chapter 18
Prevention of Money Laundering

18.1 Overview of the Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 (PMLA 2002) and the Rules notified there under came into force with effect from July 1, 2005. Director, FIU-IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act.

The Prevention of Money Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule. Certain amendments were made to this Act vide The Prevention of Money laundering (Amendment) Act, 2005(20 of 2005)

Section 4 provides that any person who commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also liable to fine which may extend to five lakh rupees. However, where the proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act, the punishment may extend to rigorous imprisonment for ten years.

18.2 Professional opportunities

1. As a consultant providing
    a. His vast expertise in handling huge quantitative data for verification of the exact nature of transactions.
    b. Building effective AML programs for the financial organisations to protect them from the potential threats.

2. As the trusted partner of the government,
    a. Ensuring implementation of the Act in letter and spirit.
    b. KYC AUDIT

3. KYC audit
    a. Customers due diligence procedures to confirm identity of Client from the records produced by him.
    b. Systems audit for checking Identity from external database.
    c. formulating and implementing the programme of KYC which is to be forwarded to Director in PMLA [Rule 9 sub rule (7) of the PML maintenance of records of the nature and value … rules].
4. Risk Advisory services (RAS), identifying the risk & its mitigating controls in the systems for proper internal control environment.

5. Management Advisory service (MAS), creating proper administrative and organisation structure to ensure the loop free information flows.

18.3 Related websites

1	Financial Intelligence Unit- India	http://www.fiuindia.gov.in/
2	Ministry of Finance	http://www.finmin.nic.in/
3	Insurance Regulatory and Development Authority	http://www.irdaindia.org/
4	Reserve Bank of India	http://www.rbi.org.in/
5	Securities and Exchange Board of India	http://www.sebi.gov.in/
6	Asia/Pacific Group on Money Laundering (APG)	http://www.apgml.org/
7	Bank for International Settlements	http://www.bis.org/
8	Caribbean Financial Action Task Force on Money Laundering (CFATF)	http://www.cfatf.org/eng/
9	Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)	http://www.esaamlg.org/
10	Egmont group	http://www.egmontgroup.org/
11	Eurasian Group on Combating Money Laundering and Financing Terrorism	http://www.eurasiangroup.org/
12	European Union	http://europa.eu/pol/fraud/index_en.htm
13	Financial Action Task Force on Money Laundering (FATF)	http://www.fatf-gafi.org
14	International Monetary Fund	http://www.imf.org/
15	International Money Laundering Information Network (IMoLIN)	http://www.imolin.org/imolin/index.html
16	Interpol - International Criminal Police Organisation	http://www.interpol.com/
17	Middle East & North Africa Financial Action Task Force (MENAFATF)	http://www.menafatf.org/
18	Organisation for Economic Co-operation and Development (OECD)	http://www.oecd.org/
19	United Nations International Drug Control Programme	http://www.unodc.org/
20	World Bank	http://web.worldbank.org/

Chapter 19

Other Areas

1. Real estate

a) Accounting
b) Consultancy in Income tax
c) Consultancy in Service Tax
d) Consultancy in Wealth Tax
e) Approval under FEMA,1999 For Foreign Direct Investment
f) Consultancy in Special economic Zones
g) Assistance in obtaining finance
h) Assistance in Title verification
i) Assistance in documentation

2. Bank Audit

a) Inventory and receivables audit
b) Concurrent audit
c) Information system (IS) Audit
d) Statutory Audit

3. Due diligence reviews

4. Insurance sector

a) Advisor
b) Actuary
c) Broker
d) Surveyor/Loss Assessor
e) Arbitration
f) Concurrent auditor
g) Inspector
h) Certifications required by Insurance Regulatory and Development Authority (IRDA)
i) Insurance Investigations
j) Consultancy in Insurance Laws

5. Treasury and cash

Managing the capital structure of the company and its cash flow are key elements in remaining profitable and managing liquidity