



The Institute of

Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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CS UPDATE

June 7, 2007

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MCA UPDATES

- A new version of e-form 32 w.e.f. 3rd June, 2007

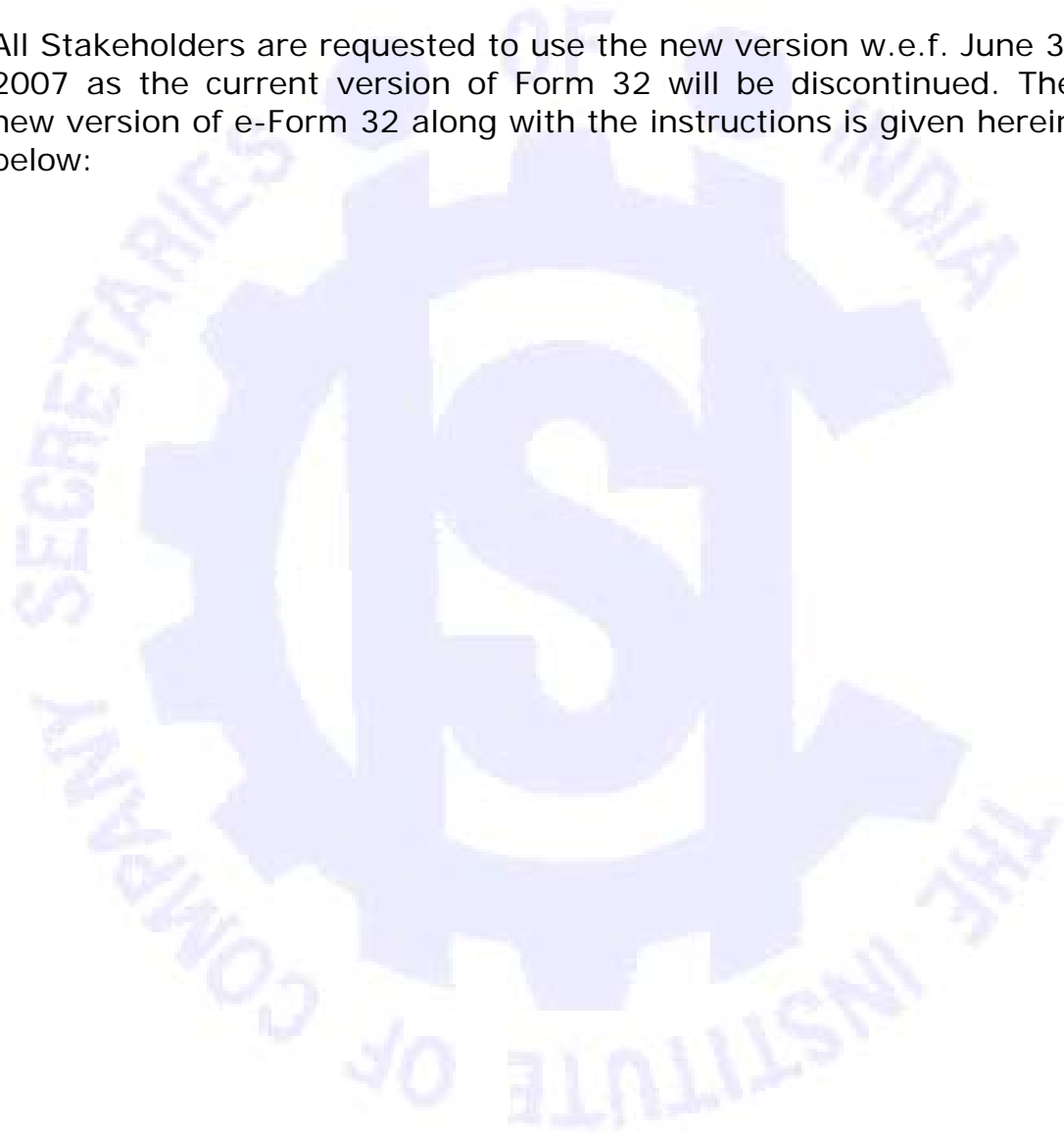
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June 7, 2007

Updated e-forms

E-Form 32 relating to “particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares” has been revised and it has come into effect from June 3, 2007.

All Stakeholders are requested to use the new version w.e.f. June 3, 2007 as the current version of Form 32 will be discontinued. The new version of e-Form 32 along with the instructions is given herein below:



FORM 32

[Pursuant to sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956]

Particulars of appointment of Managing Director, directors, manager and secretary and the changes among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares

Note - All fields marked in * are to be mandatorily filled.

1. *This form is for New company Existing company

2.(a) *Corporate identity number (CIN) of company or Form 1A reference number

(b) Global location number (GLN) of company

Pre-fill

3.(a) Name of the company

(b) Address of the registered office of the company

4. Number of Managing Director, director(s) for which the form is being filed

5. Details of the Managing Director, directors of the company

I. Details of the Managing Director or director of the company

Director identification number (DIN)

Pre-fill

Name

Father's name

Present residential address

Nationality

Date of birth

Appointment Cessation Change in designation

Designation

Date of appointment or change in designation

(DD/MM/YYYY)

Category

Whether chairman, executive director, non-executive director

Chairman Executive director Non-executive director

DIN of the director to whom the appointee is alternate

Pre-fill

Name of the director to whom the appointee is alternate

Name of the company or institution whose nominee the appointee is

e-mail ID

PART - II

Hereby confirmed that the above mentioned Director Managing Director is not associated with the company with effect from (DD/MM/YYYY) due to

6. Number of manager(s), secretary(s) for which the form is being filed

7. Details of the manager or secretary of the company

I. Details of the manager or secretary of the company					
Income-tax permanent account number (PAN)	<input type="text"/>	<input type="radio"/>	Appointment	<input type="radio"/>	Cessation
Membership number of the secretary	<input type="text"/>				
First name	<input type="text"/>				
Middle name	<input type="text"/>				
Last name	<input type="text"/>				
Father's name					
First name	<input type="text"/>				
Middle name	<input type="text"/>				
Last name	<input type="text"/>				
Present residential address	Line I	<input type="text"/>			
	Line II	<input type="text"/>			
City	<input type="text"/>	State	<input type="text"/>		
ISO country code	<input type="text"/>	Pin code	<input type="text"/>		
Phone	<input type="text"/>	Fax	<input type="text"/>		
Date of birth	<input type="text"/>	(DD/MM/YYYY)			
Designation	<input type="text"/>				
Date of appointment or cessation	<input type="text"/>	(DD/MM/YYYY)			
e-mail ID	<input type="text"/>				

June 7, 2007

Verification I

- 1. *I confirm that the information given above is true to the best of my knowledge and belief.
- 2. It is also hereby confirmed that the consent of the appointee Managing Director, director(s) has been filed as an attachment to this eForm (applicable only in the case of a public company)

Attachments:

1. Evidence of payment of stamp duty where qualification shares is involved (This will be mandatory only if the director giving consent agrees to pay for at least one share)

2. Consent(s) of the appointee Managing Director, director(s)

3. Declaration regarding qualification shares

4. Evidence of cessation

5. Optional attachment(s) - if any

List of attachments

Verification II

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution number dated (DD/MM/YYYY) to sign and submit this form.

I am authorised to sign and submit this form.

To be digitally signed by

Managing Director or director or manager or secretary of the company (In case of an existing company, person signing the form should be different from the person in whose respect the form is being filed)

*Designation

*Director identification number of the director or Managing Director; or Income-tax PAN of the manager; or Membership number, if applicable or income-tax PAN of the secretary (secretary of a company who is not a member of ICSI, may quote his/ her income-tax PAN)

Certificate

It is hereby certified that I have verified the above particulars from the books and records of

and found them to be true and correct.

- Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or Company secretary (in whole-time practice)

*Whether associate or fellow Associate Fellow

*Membership number or certificate of practice number

For office use only:

This e-Form is hereby registered

Digital signature of the authorising officer

Form 32

INSTRUCTIONS FOR FILLING OF EFORM – 32

(Particulars of appointment of Managing Director, directors, manager and secretary and the changes among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares)

S. No.	Detailed Instruction	
	Note: Instructions are not provided for the fields which are self explanatory.	
	Refer the relevant provisions of the Companies Act, 1956 and rules made there under with respect to the matter dealt in this eForm	
	To contain the size of the form within upload limit, please use "Sign and Save As..." button while applying signature(s) to the form. Do not use "Sign and Save" button.	
	<p>Please note the following –</p> <ul style="list-style-type: none"> You can file this form with different event dates (date of appointment, date of change in designation and date of cessation) only if these dates are within 30 days of the filing date. If any of the date(s) are beyond 30 days, then separate form is to be filed for every such event date. For filing of details of two or more events (for example, appointment and cessation) relating to the same person, you are required to file separate forms. These cannot be filed through the same form. It is advised that you file the forms in the chronological order of events. It implies that before filing this form you should ensure that no Form 32 is pending to be filed for the particular company where the date of event is earlier than the date(s) entered in this form. Please note that Form DIN-3 is also required to be filed for appointment of any director, managing director, manager or secretary in the company; where the date of appointment is on or before 30th June'2007. 	
2	(a)	<p>In case of an existing company, enter 'Corporate identity number' (CIN).</p> <ul style="list-style-type: none"> You may find CIN by entering existing registration number of the company in the 'Find CIN/GLN' service at the portal www.mca.gov.in <p>In case of a new company, enter 'eForm 1A reference number, i.e. 'Service Request Number (SRN) of eForm 1A', filed for name approval.</p>
3	(a), (b)	<p>Click the "Pre-fill" button.</p> <p>In case of an existing company, system will automatically display the name and address of the registered office of the company.</p> <p>In case of a new company, system will automatically display the name of the company. Address field will be disabled and is not required to be filled.</p>
4		<p>Enter the total number of Managing Director, directors(s) for which this eForm needs to be filed. (Based on the number entered here, number of blocks shall be displayed for entering the details). Details of Twelve director(s), Managing Directors can be filed through this eForm. If the total number is more than twelve, then file another eForm 32 for the remaining person(s).</p>
5		<ul style="list-style-type: none"> Enter the particulars of the Managing Director or director. Enter the Director identification number (DIN). The DIN should not be having status as rejected, revoked or lapsed. Ensure that the DIN entered is correct and then click the "Pre-fill" button. System will automatically display the name, father's name, present residential address, nationality and date of birth of the person. Verify that the details displayed are correct. Select whether the person is being appointed or is ceasing to be associated with the company or there is change in designation. In case of a new company, only appointment

	<p>can be selected.</p> <ul style="list-style-type: none"> • Select the designation of the person. In case of change in designation, select the new designation. In case of cessation, select the same designation as at the time of appointment or change in designation. • Examples in respect of option 'Change in designation' – <ul style="list-style-type: none"> ➢ In case of appointment of an additional director, file the form with option as 'Appointment' and designation as 'Additional director'. Upon confirmation at the subsequent AGM, file the form with as 'Change in designation' and designation as applicable. ➢ When an existing director becomes a Managing Director; or an existing Managing Director ceases to be so and only remains as a director, then also the option Change in Designation should be used to file the form. • In case of appointment, enter the date of appointment and in case of change in designation, enter the date of change in designation. In case of new company, this date field is not required to be entered. In such case, upon registration of the eForm, the system shall take it as the date of incorporation of the company. This date is not required to be entered in case of cessation. • Select the category which is most appropriate. This is not required to be selected in case of cessation. • Select one or more options that whether the director is Chairman, Executive or Non-Executive (Executive and Non-Executive director, both cannot be selected) • In case of an alternate director, enter the DIN of the director to whom the appointee is alternate and click "Pre-fill" button. System will automatically display the name of the director to whom the appointee is alternate. This is not required to be entered in case of cessation. • In case of appointment of a nominee director, enter the name of the company or institution whose nominee the appointee is. • Age of the appointee cannot be less than eighteen years. • Enter the email ID of the person (managing director or director) for communication purpose.
	<p>Part II is applicable in case of cessation only.</p> <ul style="list-style-type: none"> • System will automatically select Director or Managing Director on the basis of the designation selected in the eForm. • Enter the date of cessation and select the reason of cessation from the drop-down list.
6	<p>Enter the total number of manager(s), secretary(s) for which this eForm needs to be filed. (Based on the number entered here, number of blocks shall be displayed for entering the details). Details of Four manager(s), secretary(s) can be filed through this eForm. If the total number is more than four, then file another eForm 32 for the remaining.</p>
7	<ul style="list-style-type: none"> • Enter the particulars of the manager or secretary. • Enter the Income-tax PAN • Select whether the person is being appointed or is ceasing to be associated with the company. In case of a new company, only appointment can be selected. • Enter the Membership number in case of secretary who is a member of Institute of Company Secretaries of India (ICSI). • Enter details of name and father's name of the person. You are advised to enter the full name instead of using abbreviation in the name fields. • Enter the present residential address and date of birth. If the person is residing outside India, select NA in the state field from the drop down list and enter the Country code from the list of ISO Country code provided below.

	<ul style="list-style-type: none"> Select the designation of the person from the drop down menu. In case of appointment, enter the date of appointment and in case of cessation, enter the date of cessation. In case of new company, this date field is not required to be entered. In such case, upon registration of the eForm, the system shall take date of appointment as the date of incorporation of the company. Enter the email ID of the person (manager or secretary) for communication purpose.
Verification I	<p>Point 1 is mandatory to be marked.</p> <p>Point 2 is required to be marked in case of appointment of director and/ or managing director and the company is a public non-government company.</p>
Attachments	<ul style="list-style-type: none"> Evidence of payment of stamp duty is mandatory in case qualification shares have been taken. The text of the declaration should be as follows – 'I, ----- (Name of the appointee), having consented to act as a director of the company ----- (Name of the company), also hereby undertake to take from the said company and pay for ----- shares of Rs. ----- each, being the number/ value of the shares prescribed as the qualification shares for the office of director of the said company. In case of appointment of director and/ or managing director and the company is a public non-government company, consent letter of appointee(s) is required to be attached. The text of the declaration should be as follows – 'I, the undersigned, having consented to act as a managing director/ director of the company ----- (Name of the company), pursuant to section 264(2)/ 266(1)(a) of the Companies Act, 1956 and certify that I have not been disqualified to act as a director under section 267 and/or 274 of the Companies Act, 1956.' In case cessation is due to resignation or disqualification or removal, attach the supporting evidence. Any other information can be provided as an optional attachment.
Verification II	<p>In case of an existing company, select the first check box and enter the serial number and date of board resolution authorising the signatory to sign and submit the eForm.</p> <p>In case of a new company, select the second check box.</p>
Digital signature	<p>In case of an existing company the eForm should be digitally signed by a managing director or director or manager or secretary of the company duly authorised by the board of directors. In such case, the person signing the form should be different from the person in whose respect the form is being filed. However, if the eForm is being filed in respect of all the existing directors, then it can be signed by any one of them duly authorised by the board of directors.</p> <p>In case of a new company the eForm should be digitally signed by a managing director or director of the company whose name has been given in the articles of association of the company and is duly authorised by the promoters.</p>
Certificate	<p>The eForm should be certified by a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice) or company secretary (in whole-time practice) by digitally signing the eForm.</p> <p>Select the relevant category of the professional and whether he/ she is an associate or fellow.</p> <p>In case the professional is a chartered accountant (in whole-time practice) or cost accountant (in whole-time practice), enter the membership number. In case the practising professional is a company secretary (in whole-time practice), enter the certificate of practice number.</p>

Note: The original attachment relating to qualification share(s) duly filled in and signed on stamp paper is required to be sent to the concerned RoC Office simultaneously, failing which the filing will not be considered and legal action will be taken.

Common Instruction Kit

Buttons	Particulars
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Pre Fill	When the user clicks the pre fill button after entering the corporate identity number in eForm (excepting eForm 1A), the name and address is displayed by the system. This button may appear more than once in a eForm, and shall be required to be clicked for displaying the data pertaining to that field. You are required to be connected to the internet for pre-filling.
Attach	You have to click the attach button corresponding to the document you are making an attachment. In case you wish to attach any other document, please click the optional attach button.
Remove attachment	You can view the attachments added to eForm in the rectangle box provided next to the list of attachment. If the user wants to remove or delete any attachment, select the attachment to be removed and press the "Remove attachment" button.
Check Form	Once the form is filled up. The user is required to press the Check Form button. When this button is pressed form level validation is done such as, Whether all the mandatory fields are filled up or not. If an error is displayed after pressing the button the user is required to correct the mistake and again press the "Check Form" button. When all the form level validation is done. A message is displayed that "Form level pre scrutiny is successful". The Check Form is done without being connected to the internet.
Modify	"Modify" button gets enabled after the check form is done. By pressing this button the user can make the changes in the filled in form. If the user makes any change in the form again the user is required to press the "Check Form" button.
Pre scrutiny	Once the check form is done the user is required to Pre scrutinize the eForm. This requires being connected to the MCA21 site for uploading the form. On pre-scrutiny the system level check is performed and if there are any errors it is displayed to the user and once the error is corrected and again on Pre scrutiny if the message displayed is "No errors found. Click on the button below to "Get Form" Press the Get Form button and make the required corrections. Note: before pressing Submit button attach the digital signature by clicking on the box appearing on the signature field <input type="text"/>
Submit	After pre scrutiny is done the user is required to submit the form. This requires being connected to the MCA21 site for uploading the form. In case of online filing the user can submit the form by pressing the "Submit" button Once the form is submitted the fee is displayed to the user. When the user press the "Pay" button the mode of payment option is displayed. On challan payment option, a challan is generated displaying the amount of fee to be paid. The user is required to take the print out of three copies of challan and submit the payment at authorized bank branch. The user has to submit three copies at bank and user shall receive one copy with bank acknowledgment for user's record.
Country code	The list of country code required to be mentioned in the form are as follows:

Note: User is advised to refer to eForm specific instruction kit.

List of ISO Country Code

Country Name	Country Code	Country Name	Country Code
AFGHANISTAN	AF	CAPE VERDE	CV
ÅLAND ISLANDS	AX	CAYMAN ISLANDS	KY
ALBANIA	AL	CENTRAL AFRICAN REPUBLIC	CF
ALGERIA	DZ	CHAD	TD
AMERICAN SAMOA	AS	CHILE	CL
ANDORRA	AD	CHINA	CN
ANGOLA	AO	CHRISTMAS ISLAND	CX

Country Name	Country Code	Country Name	Country Code
ANGUILLA	AI	COCOS (KEELING) ISLANDS	CC
ANTARCTICA	AQ	COLOMBIA	CO
ANTIGUA AND BARBUDA	AG	COMOROS	KM
ARGENTINA	AR	CONGO	CG
ARMENIA	AM	CONGO, THE DEMOCRATIC REPUBLIC OF THE	CD
ARUBA	AW	COOK ISLANDS	CK
AUSTRALIA	AU	COSTA RICA	CR
AUSTRIA	AT	COTE D'IVOIRE	CI
AZERBAIJAN	AZ	CROATIA	HR
BAHAMAS	BS	CUBA	CU
BAHRAIN	BH	CYPRUS	CY
BANGLADESH	BD	CZECH REPUBLIC	CZ
BARBADOS	BB	DENMARK	DK
BELARUS	BY	DJIBOUTI	DJ
BELGIUM	BE	DOMINICA	DM
BELIZE	BZ	DOMINICAN REPUBLIC	DO
BENIN	BJ	ECUADOR	EC
BERMUDA	BM	EGYPT	EG
BHUTAN	BT	EL SALVADOR	SV
BOLIVIA	BO	EQUATORIAL GUINEA	GQ
BOSNIA AND HERZEGOVINA	BA	ERITREA	ER
BOTSWANA	BW	ESTONIA	EE
BOUVET ISLAND	BV	ETHIOPIA	ET
BRAZIL	BR	FALKLAND ISLANDS (MALVINAS)	FK
BRITISH INDIAN OCEAN TERRITORY	IO	FAROE ISLANDS	FO
BRUNEI DARUSSALAM	BN	FIJI	FJ
BULGARIA	BG	FINLAND	FI
BURKINA FASO	BF	FRANCE	FR
BURUNDI	BI	FRENCH GUIANA	GF
CAMBODIA	KH	FRENCH POLYNESIA	PF
CAMEROON	CM		
CANADA	CA		
GABON	GA	FRENCH SOUTHERN TERRITORIES	TF
GAMBIA	GM	LAO PEOPLE'S DEMOCRATIC REPUBLIC	LA
GEORGIA	GE	LATVIA	LV
GERMANY	DE	LEBANON	LB
GHANA	GH	LESOTHO	LS
GIBRALTAR	GI	LIBERIA	LR
GREECE	GR	LIBYAN ARAB JAMAHIRIYA	LY
GREENLAND	GL	LIECHTENSTEIN	LI
GRENADA	GD	LITHUANIA	LT
GUADELOUPE	GP	LUXEMBOURG	LU
GUAM	GU	MACAO	MO
GUATEMALA	GT	MACEDONIA, THE FORMER	MK

Country Name	Country Code	Country Name	Country Code
		YUGOSLAV REPUBLIC OF	
GUINEA	GN	MADAGASCAR	MG
GUINEA-BISSAU	GW	MALAWI	MW
GUYANA	GY	MALAYSIA	MY
HAITI	HT	MALDIVES	MV
HEARD ISLAND AND MCDONALD ISLANDS	HM	MALI	ML
HOLY SEE (VATICAN CITY STATE)	VA	MALTA	MT
HONDURAS	HN	MARSHALL ISLANDS	MH
HONG KONG	HK	MARTINIQUE	MQ
HUNGARY	HU	MAURITANIA	MR
ICELAND	IS	MAURITIUS	MU
INDIA	IN	MAYOTTE	YT
INDONESIA	ID	MEXICO	MX
IRAN, ISLAMIC REPUBLIC OF	IR	MICRONESIA, FEDERATED STATES OF	FM
IRAQ	IQ	MOLDOVA, REPUBLIC OF	MD
IRELAND	IE	MONACO	MC
ISRAEL	IL	MONGOLIA	MN
ITALY	IT	MONTSERRAT	MS
JAMAICA	JM	MOROCCO	MA
JAPAN	JP	MOZAMBIQUE	MZ
JORDAN	JO	MYANMAR	MM
KAZAKHSTAN	KZ	NAMIBIA	NA
KENYA	KE	NAURU	NR
KIRIBATI	KI	NEPAL	NP
KOREA, DEMOCRATIC PEOPLE'S REPUBLIC OF	KP	NETHERLANDS	NL
KOREA, REPUBLIC OF	KR	NETHERLANDS ANTILLES	AN
KUWAIT	KW	NEW CALEDONIA	NC
KYRGYZSTAN	KG	NEW ZEALAND	NZ
		NICARAGUA	NI
		NIGER	NE
		NIGERIA	NG
NIUE	NU	SPAIN	ES
NORFOLK ISLAND	NF	SRI LANKA	LK
NORTHERN MARIANA ISLANDS	MP	SUDAN	SD
NORWAY	NO	SURINAME	SR
OMAN	OM	SVALBARD AND JAN MAYEN	SJ
PAKISTAN	PK	SWAZILAND	SZ
PALAU	PW	SWEDEN	SE
PALESTINIAN TERRITORY, OCCUPIED	PS	SWITZERLAND	CH
PANAMA	PA	SYRIAN ARAB REPUBLIC	SY
PAPUA NEW GUINEA	PG	TAIWAN, PROVINCE OF CHINA	TW
PARAGUAY	PY	TAJIKISTAN	TJ
PERU	PE	TANZANIA, UNITED REPUBLIC OF	TZ
PHILIPPINES	PH	THAILAND	TH

Country Name	Country Code	Country Name	Country Code
PITCAIRN	PN	TIMOR-LESTE	TL
POLAND	PL	TOGO	TG
PORTUGAL	PT	TOKELAU	TK
PUERTO RICO	PR	TONGA	TO
QATAR	QA	TRINIDAD AND TOBAGO	TT
REUNION	RE	TUNISIA	TN
ROMANIA	RO	TURKEY	TR
RUSSIAN FEDERATION	RU	TURKMENISTAN	TM
RWANDA	RW	TURKS AND CAICOS ISLANDS	TC
SAINT HELENA	SH	TUVALU	TV
SAINT KITTS AND NEVIS	KN	UGANDA	UG
SAINT LUCIA	LC	UKRAINE	UA
SAINT PIERRE AND MIQUELON	PM	UNITED ARAB EMIRATES	AE
SAINT VINCENT AND THE GRENADINES	VC	UNITED KINGDOM	GB
SAMOA	WS	UNITED STATES	US
SAN MARINO	SM	UNITED STATES MINOR OUTLYING ISLANDS	UM
SAO TOME AND PRINCIPE	ST	URUGUAY	UY
SAUDI ARABIA	SA	UZBEKISTAN	UZ
SENEGAL	SN	VANUATU	VU
SERBIA AND MONTENEGRO	CS	VENEZUELA	VE
SEYCHELLES	SC	VIET NAM	VN
SIERRA LEONE	SL	VIRGIN ISLANDS, BRITISH	VG
SINGAPORE	SG	VIRGIN ISLANDS, U.S.	VI
SLOVAKIA	SK	WALLIS AND FUTUNA	WF
SLOVENIA	SI	WESTERN SAHARA	EH
SOLOMON ISLANDS	SB	YEMEN	YE
SOMALIA	SO	ZAMBIA	ZM
SOUTH AFRICA	ZA	ZIMBABWE	ZW
SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS	GS		

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CAPITAL MARKET UPDATES

- **Views invited on Draft SEBI(Certification of Associated Persons in the Securities Market)Regulations,2007**

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Views invited on Draft SEBI(Certification of Associated Persons in the Securities Market)Regulations,2007

SEBI has placed on its website Draft SEBI(Certification of Associated Persons in the Securities Market)Regulations,2007 for Public Comments.

We seek your views and suggestions on the Draft Regulations and would appreciate to receive the same by June 25 ,2007 at drs1@icsi.edu with a copy to sonia@icsi.edu so that we may collate all views and thereafter finalise the views of the Institute for sending to SEBI.

Draft Regulations**SECURITIES AND EXCHANGE BOARD OF INDIA****(CERTIFICATION OF ASSOCIATED PERSONS IN THE SECURITIES MARKET) REGULATIONS, 2007**

S.O. No..... (E). In exercise of the powers conferred by Section 30 read with Sections 11(1), 12 and 19 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:-

CHAPTER I**PRELIMINARY****Short Title and Commencement.**

1. (1) These regulations may be called the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Market) Regulations, 2007.
- (2) They shall come into force on the date of the publication in the official gazette.

Definition

2. (1) In these regulations, unless the context otherwise requires, -

- (a) “Act” means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (b) “agent” means any person who is engaged in activity of sale or distribution of securities on behalf of an issuer or a distributor for a commission or any other consideration;
- (c) “Associated Persons” means a sole proprietor, managing partner, whole time director, principal or employee of an intermediary or an agent or distributor or other natural person, engaged in the securities business;
- (d) “Board” means the Securities and Exchange Board of India established under Section 3 of the Act;
- (e) “Continuing Professional Education” (CPE) means any course / programme / activity / conference that has been accredited / approved by NISM to enhance the knowledge, skills and professional competency of associated persons in the areas of securities, governance and ethics.
- (f) “distributor” means any person engaged by an intermediary or an issuer for the purpose of sale or distribution of securities;
- (g) “Intermediary” means an entity registered under Section 12 of the Act and includes any person required to obtain any membership or approval from a self-regulatory organization;
- (h) “issuer” means a company or a mutual fund or a collective investment scheme which has issued securities to the public as per the relevant regulations or guidelines made by the Board;
- (i) “NISM” means the National Institute of Securities Markets established by the Board;

(j) “principal” means persons associated with an intermediary who are actively engaged in the management of the intermediary’s securities business; including supervision, solicitation, conduct of business. Such persons may include:

- (1) Sole Proprietors
- (2) Managing Partners
- (3) Whole Time Directors
- (4) Managers and
- (5) Officers in management grade.

(k) “securities” means securities as defined in Section 2(h) of Securities Contracts (Regulation) Act, 1956 (42 of 1956).

(2)(a) Words and expressions used and not defined in these regulations shall have the meanings, if any, respectively assigned to them under the Act or any amendment thereto or re-enactment thereof.

(b) Words and expressions used and not defined either in these regulations or in the Act, shall have the meanings, if any, respectively assigned to them under the Securities Contracts (Regulation) Act, 1956 or any amendment thereto or re-enactment thereof.

(c) Words and expressions used and not defined either in these regulations or in the Act or in the Securities Contract (Regulation) Act, 1956 shall have the meanings , if any, respectively assigned to them under the Companies Act, 1956, or any amendment thereto or re-enactment thereof.

CHAPTER II

CERTIFICATION OF ASSOCIATED PERSONS

3. (1) The Board may by notification in the Official Gazette specify the requirement for certain categories of associated persons to pass an examination and obtain requisite certificate for engagement or employment with certain or all categories of intermediaries.

- (2) On and from such date as may be specified by the Board by notification in the Official Gazette, no intermediary shall employ or engage or continue to employ or engage any such category of associated person which does not possess the requisite certificate in terms of these Regulations.

Provided that the associated person employed or engaged by an intermediary before the specified date for which no certificate was necessary, such associated

person may continue to work with the intermediary and shall pass the examination and obtain such certificate within two years from the specified date.

Provided further that such associated person who holds a certificate for a certain category as recognized by the Board as on the specified date, shall not be required to obtain a fresh certificate for the same category during the validity of such certificate.

Provided further that an associated person who has attained the age of fifty years or who has atleast ten years experience in securities market as on the specified date shall not be required to pass requisite examination to obtain certificate. Such a person shall be awarded the certificate upon his completing a continuing professional education course specified by the Board within one year from the specified date.

- (3) The Board for the purpose of issuing notification under sub regulation (1) and (2) shall take into consideration :
- a) Whether the associated person as part of its work or operation deals / interacts with the investors, issuers or clients of intermediaries;
 - b) Whether the associated person deals with assets or funds of investor or clients;
 - c) Whether the associated person handles redressal of investor grievances;

- d) Whether the associated person is responsible for internal control or risk management.
- e) Whether the associated person is responsible for compliance of any rules or regulations.
- f) Whether the associate person is engaged in activities that have a bearing on operation risk of the intermediary.

Validity period of certificate

- 4. (1) The certificate obtained under regulation 3 shall be valid for a period of three years.
- (2) Upon expiry of the validity of certificate possessed by an associated person, the certificate shall be revalidated for a period of three years at a time, provided the associate person successfully completes a programme of continuing professional education course specified by the Board.

CHAPTER III

POWERS AND FUNCTIONS OF NISM

Powers and functions of NISM

- 5. (1) NISM would perform the functions delegated to it under these regulations or as may be delegated by the Board.
- 2. Without prejudice to the generality of the foregoing provisions and the activities of NISM under its articles, the functions of NISM in respect of certification for associated persons in the securities market shall include putting in place and implementing a certification process, procedures and policies.

CHAPTER IV

**ASSOCIATED PERSON NOT TO DEAL ETC. WITHOUT
CERTIFICATION**

Associated person not to deal without a valid certificate

6. (1) On and from such date as may be notified by the Board, no associated person working or associated with an intermediary in securities market shall perform any duty, or effect any transaction, or induce the purchase or sale of any security or interface with the client or investor or deal with fund or securities of investors or client of an intermediary unless such associated person possesses a valid certificate as may be specified by NISM.

(2) NISM in consultation with the Board may lay down such standards which may –

- (a) specify that all or any portion of such standards shall be applicable to certain or all classes of associated persons working or associated with certain or all categories of intermediaries in securities market;
- (b) require associated persons in any such class to pass specified examinations with respect to any class of persons associated with the intermediary ;
- (c) specify that associated persons in any such class may be qualified to be employed or engaged or continued to be employed or engaged by an intermediary solely on the basis of compliance with such standards of examination, continuing professional education requirements and such other qualifications as NISM in consultation with the Board may specify.

Conduct of certification examination and continuing professional education courses

7. For conducting certification and continuing professional education courses, NISM may:
 1. Accredit / approve / engage any organization, self regulatory organization or body to administer certification examinations.
 2. Accredit / approve / engage any organization, self regulatory organization or body to conduct all or specific continuing professional education courses / programmes / activities / conferences as may be specified from time to time by NISM.
 3. Require all associated persons, appearing for certification examinations or undergoing continuing professional education courses / programmes / activities / conferences, as applicable, to pay reasonable fees or charges to defray the costs incurred in conducting such certification examinations and continuing professional education courses / programmes / activities / conferences.

CHAPTER V

CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

Continuing Professional Education requirements of associated persons

8. (1) On and from such date as may be notified by the Board, NISM shall specify the requirements for continuing professional education (CPE) of associated persons and approve all CPE courses / programmes / activities / conferences that may be conducted by entities accredited and engaged as per Regulation 7 (2).
- (2) No intermediary shall permit any associated persons to continue and no associated persons shall continue to perform duties as an associated person unless such person has complied with the requirements of sub regulation (1).

(3) The requirements of sub regulation (1) and (2) shall apply to such category of associated persons who have direct contact with customers in the conduct of the intermediary's business or deal with fund or securities of customers or executes transactions in securities or who interacts with clients for redressal of their grievances or who perform duties that have significant impact on operation risk or who are responsible for internal control or risk management or compliance function of intermediary.

Intermediary to ensure participation in continuing professional education

9 (1) Each intermediary shall be responsible to ensure that its associated persons participate in the continuing education programmes as specified in Regulation 8 (1).

(2) Associated persons shall take all appropriate and reasonable steps to participate in continuing professional education programs as required by the intermediary.

CHAPTER VI

MISCELLANEOUS

Certification of associated persons to be pre-condition for registration of intermediaries.

10. Compliance with the provision of these Regulations shall be one of the factors to be taken into consideration by the Board for the purpose of granting or renewal of registration to an intermediary under the respective regulations or for determining competence criteria under SEBI (Criteria for Fit and Proper Person) Regulations, 2004.

**M. DAMODARAN
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA**

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FEMA UPDATES

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RBI/2006-07/426
A. P. (DIR Series) Circular No. 68

June 01, 2007

To,
All Category - I Authorised Dealer Banks

Madam / Sir,

Overseas Direct Investment - Rationalisation of Forms

Attention of Authorised Dealer Category-I (AD Category - I) banks is invited to Notification No.FEMA120/RB-2004 dated July 7, 2004, [Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000] as amended from time to time.

2. At present, application for overseas direct investment is required to be made in any one of the three forms viz., ODA for direct investments in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) under automatic route, ODI for investments under approval route and ODB for issue of ADRs / GDRs on back to back basis. Further, reporting of remittances is currently required to be made through AD Category -I banks in either of the two forms viz., ODR for remittances made for overseas direct investments and ODG for overseas acquisitions made under ADR / GDR Stock Swap Scheme. Form APR is the Annual Performance Report on the functioning of overseas JV / WOS. The liberalisation in the policy on overseas investments has enabled many Indian corporates to establish presence in overseas markets, redefining the global outreach of Indian entities. However, the reporting framework has not kept pace with the developments and does not capture data comprehensively on overall costs of acquisition, funding patterns, performance indicators, etc.

3. Accordingly, as announced in the Annual Policy for the Year 2007-08 (para 133), with a view to improving the coverage and to ensure monitoring of the flows in a dynamic environment, it has now been decided to revise the existing reporting system. As per the new reporting package, all the forms have been subsumed into one form viz. ODI, comprising of four parts:

Part I - which includes the following:

- Section A – Details of the Indian Party
- Section B – Details of Investment in New Project
- Section C - Details of Investment in Existing Project
- Section D – Funding for JV / WOS
- Section E – Declaration by the Indian Party
- Section F - Certificate by the Statutory Auditors of the Indian Party

Part II - Reporting of Remittances

Part III - Annual Performance Report (APR)

Part IV – Report on Closure / Disinvestment / Voluntary Liquidation / Winding up of JV / WOS.

4. A new system has also been introduced for reporting Closure / Disinvestment / Winding up / Voluntary Liquidation of the overseas JV / WOS under general

permission (Part IV of form ODI). The revised ODI form and instructions for filling up the forms are annexed.

Reporting in the revised form ODI **will come into effect from June 1, 2007**. The form can also be downloaded from Reserve Bank's website www.rbi.org.in.

5. It is reiterated that the revised form is only a rationalisation of the reporting procedure and there is no change or dilution in the existing eligibility criteria / documentation / limits.

Eventually, these reports will be received on line by Reserve Bank.

6. Accordingly, AD Category - I banks may take action as under:

a) In cases of Automatic Route – Parts I and II of form ODI should be submitted to The Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Amar Bldg. 3rd floor, Sir P. M. Road, Fort, Mumbai 400001.

b) In case of Approval Route – Part I of form ODI, along with the supporting documents, is required to be submitted after scrutiny and with specific recommendations by the designated AD Category - I bank, at the address mentioned above. In case the proposal is approved, Part I will be returned by the Reserve Bank to the AD Category - I bank. After effecting the remittance, the AD Category – I bank should resubmit the same to the Reserve Bank along with Part II of form ODI.

c) In case of disinvestment / closure / winding up / voluntary liquidation under the Automatic Route, in terms of A. P. (Dir Series) Circular No. 29 dated March 27, 2006, a report should be submitted by the designated AD Category - I bank, in Part IV of form ODI. In all other cases of disinvestment, an application along with the necessary supporting documents should be submitted to the Reserve Bank as per the current procedure.

7. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

8. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(Salim Gangadharan)
Chief General Manager

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RBI/2006-2007/422
A.P. (DIR Series) Circular No.65

May 31, 2007

To
All Category - I Authorised Dealer banks

Madam / Sir,

Remittance on winding up of companies

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to Regulation 3 of Notification No. FEMA 13/2000-RB dated 3rd May 2000 Foreign Exchange Management (Remittance of Assets) Regulations, 2000, in terms of which unless otherwise provided in the Act or rules or regulations no person whether a resident in India or not, shall make remittance of any assets held in India by him or any other person except with the permission of the Reserve Bank. Therefore, as per the existing provisions, remittance of out of the assets of Indian companies under liquidation requires prior approval of the Reserve Bank.

2. As announced in the Annual Policy Statement for the year 2007-08 (para 146 (i) (vii)), as a measure of simplification of procedure, it has been decided to delegate powers to AD Category – I banks to permit remittance out of assets of Indian companies under liquidation under the provisions of the Companies Act, 1956 subject to any order issued by the court winding up the company or the official liquidator or the liquidator in case of voluntary winding up and also subject to tax compliance.

3. Accordingly, AD Category – I banks are now permitted to allow remittance of out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 1956, subject to the following conditions :

(i) AD Category-I bank shall ensure that the remittance is in compliance with the order issued by a court in India / order issued by the official liquidator or the liquidator in the case of voluntary winding up ; and

(ii) no remittance shall be allowed unless the applicant submits :-

(a) No objection or Tax clearance certificate from Income Tax authority for the remittance.

(b) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

(c) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.

(d) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

4. Necessary amendments to Notification No. FEMA 13/2000-RB dated 3rd May 2000 [Foreign Exchange Management (Remittance of Assets) Regulations, 2000] are being notified separately.

5. AD Category - I banks may bring the contents of the circular to the notice of their constituents and customers concerned.

6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

Salim Gangadharan
Chief General Manager

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