



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 14, 2007

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## RECOGNITION RECEIVED FROM MADURAI KAMARAJ UNIVERSITY FOR PURSUING PH.D

Madurai Kamaraj University, Palkalai Nagar, Madurai 625 021 vide letter No. R3/Ph.D-2007 dated 13.05.2007 has accorded recognition to Company Secretaryship Qualification as equivalent to Post Graduate Degree of Commerce and Management Studies for the purpose of registering for Ph.D. Programmes in Commerce and Management Studies of the University.

The consolidated list of Universities which have so far recognized Company Secretaryship Qualification as equivalent to Post Graduate Degree for pursuing Ph.D Course along with copies (images) of recognition letters is available on the Institute's website ([www.icsi.edu](http://www.icsi.edu)) at <http://www.icsi.edu/DesktopDefault.aspx?tabid=103>

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# MCA UPDATES

- **Concept Paper on the Council for Regulation of Valuation Professionals**

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## **Concept Paper on the Council for Regulation of Valuation Professionals**

The Ministry of Corporate Affairs has posted on its website [www.mca.gov.in](http://www.mca.gov.in), for suggestions and comments, a Concept Paper on the Council for Regulation of Valuation Professionals.

The Concept Paper seeks to establish a Council for Regulation of Valuation Professionals and to give the ICSI, ICWAI and ICAI an equal representation on the Council.

The Bill, *inter alia*, provides for the following:

- Under section 13 of the Council for Regulation of Valuation Professionals Bill, 20\*\*, ICSI is one of the Recognised Institutes.
- Under section 3 of the Bill two representatives of the ICSI will represent the ICSI on the Council.
- The functions of the Recognised Institute are specified in section 14 of the Bill.
- The functions of the Council are specified in section 9 of the Bill.

The Concept Paper is available on [http://www.mca.gov.in/MinistryWebsite/dca/latestnews/Draft\\_valuation\\_concept\\_paper.pdf](http://www.mca.gov.in/MinistryWebsite/dca/latestnews/Draft_valuation_concept_paper.pdf).

All members are requested to send their comments and suggestions on Concept Paper by email to Shri Balwant Kulkarni at [dbkk@icsi.edu](mailto:dbkk@icsi.edu) by June 21, 2007 to enable the Institute to compile, consolidate and send the suggestions, after examining them, to the Ministry.

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# TAX LAW UPDATES

- *Option to Certify TDS certificates by way of Digital Signatures*

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CIRCULAR NO. 2/2007, DATED 21-5-2007

OPTION TO CERTIFY TDS CERTIFICATES BY WAY OF DIGITAL SIGNATURES – CIRCULAR UNDER SECTION 119 OF THE INCOME-TAX ACT, 1961.

The provisions of section 203 of the Income-tax Act, 1961 lay down that every person responsible for deduction of tax at source shall furnish a certificate of deduction of tax at source to the deductee specifying therein the amount of the tax deducted and the rate at which the tax has been deducted and other particulars prescribed under rule 31 of the Income-tax Rules, 1962. The relevant Form for such certificate in respect of tax deducted at source from income chargeable under the head “Salaries” is Form No.16.

2. Representations have been received in Board to the effect that some companies have a large number of employees and the issuance of certificates of deduction of tax at source with manual signatures is becoming very time consuming. The request, therefore, is that the Department should allow the employers to use their digital signatures to authenticate TDS certificates instead of signing the certificates manually. As the field formations are aware, the requirement of annexing TDS certificates with the return of income has been dispensed with. The TDS certificates are now issued only for the purpose of personal record of the deductees subject to the condition that they may be required to produce the same on demand before the Assessing Officer in terms of section 139C, inserted by the Finance Act, 2007. The TDS claim made in the return of income is also required to be matched with the e-TDS returns furnished by the deductors. Assessing Officers may, if considered necessary, also write to the deductors for verification of the correctness of the taxes deducted or other particulars mentioned in the certificate.

3. Digital signatures are being used to authenticate most of the e-commerce transactions on the internet. The transmission of information using digital signatures is failsafe. The Central Board of Direct Taxes have, therefore, in exercise of powers under section 119 of the Income-tax Act, 1961, decided for the proper administration of this Act to allow the deductors, at their option, in respect of the tax to be deducted at source from income chargeable under the head “Salaries” to use their digital signatures to authenticate the certificates of deduction of tax at source in Form No.16. The deductors will have to ensure that TDS certificates in Form No.16 bearing digital signatures have a control No. with log to be maintained by the employer (deductor). The deductor will ensure that its TAN and the PAN of the employee are correctly mentioned in such Form No.16 issued with digital signatures. The deductors will also ensure that once the certificates are digitally signed, the contents of the certificates are not amenable to change by anyone. The income-tax authorities shall treat such certificate with digital signatures as a certificate issued in accordance with rule 31 of the Income-tax Rules, 1962.

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# CAPITAL MARKET UPDATES

- SEBI constitutes Group to address issues relating to transmission of securities

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**SEBI constitutes Group to address issues relating to transmission of securities**

SEBI has constituted a Group to suggest suitable measures to address issues relating to difficulties faced by the investors while dealing with transmissions of securities in physical and dematerialised mode. The Group will be headed by Shri R.K. Nair, Executive Director, SEBI. The other members of the Group are: Shri A P Bakliwal, President, Bombay Shareholders Association, Shri S.V.M.D. Rao, General Manager, SEBI and Shri Ananta Barua, Joint Legal Adviser, SEBI. Shri Jeevan Sonparote, Deputy General Manager, SEBI shall be the Member Secretary of the Group.

The terms of the reference of the Group shall be to:

1. examine various procedures followed by the listed companies and registrar and share transfer agents for transmission of physical shares
2. explore the implementation of the concept of either or survivor in depository system
3. suggest uniform norms and procedures relating to the transmission of physical shares, specifically with reference to documentation required for transmission.

The Group shall submit its report along with its suggestions within a period of two months.

Mumbai

June 11, 2007

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# FEMA UPDATES

- Investment by Mutual Funds in Overseas Securities – Liberalisation
- Foreign Investments in Preference Shares—Revised Guidelines
- Foreign Investments in Debentures —Revised Guidelines

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June 14, 2007

**RBI/2006-2007/433**

**A.P. (DIR Series) Circular No.72**

**June 8, 2007.**

To  
All Category- I Authorised Dealer Banks

Madam / Sirs,

**Investment by Mutual Funds in Overseas Securities - Liberalisation**

Attention of Authorised Dealer Category - I (AD Category - I ) banks is invited to Regulation 6C and Regulation 26 of Notification No.FEMA.120/RB-2004 dated 7 July 2004, as amended, from time to time, AP (Dir Series) Circular No. 97 dated April 29, 2003 and AP.(DIR Series) Circular No. 3 dated July 26, 2006.

2. Presently, Mutual Funds, registered with SEBI, are permitted to invest in ADRs/GDRs of Indian companies, rated debt instruments and also in the equity of overseas companies listed on a recognised stock exchange overseas. To enable the Mutual Funds to tap a larger investible stock overseas, it has been decided that they may also invest in

- i) Overseas mutual funds that make nominal investments (say to the extent of 10% of net asset value) in unlisted overseas securities;
- ii) Overseas exchange traded funds that invest in securities; and
- iii) ADRs/GDRs of foreign companies.

3. Monthly reporting requirement to the Reserve Bank as stipulated vide A.P. (DIR Series) Circular No.3 dated July 26, 2006 would continue for statistical purposes with modifications to include the above three categories of investments. The revised format is annexed.

4. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 will be issued separately.

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

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**

ANNEX  
[Annex to A.P.(DIR Series) Circular No.72 dated 08.06.2007]

(USD in thousands)

Name of the Mutual Fund	Investments made during the month (Outflow)					Disinvestment made during the month (Inflow)					Net amount of Investment held abroad				
	ADR/GDR	Debt Instruments	Equity	ETF (securities)	Mutual Funds	ADR/GDR	Debt Instruments	Equity	ETF (securities)	Mutual Funds	ADR/GDR	Debt Instruments	Equity	ETF (securities)	Mutual Funds
Position as on 1 <sup>st</sup> of _____ 200															
Position as on 30 <sup>th</sup> /31 <sup>st</sup> of _____ 200															

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**RBI/2006-2007/434  
A.P. (DIR Series) Circular No.73**

**June 8, 2007.**

To  
All Category - I Authorised Dealer banks

Madam/Sir,

**Foreign Investments in Preference Shares—Revised Guidelines**

1. Attention of Authorised Dealers is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 as amended from time to time. In terms of Schedule 1 of the notification, a person resident outside India can purchase equity/preference/ convertible preference shares and convertible debentures issued by an Indian company.

2. Government of India, Ministry of Finance vide Press Note dated April 30, 2007 (Annex), has notified the revised guidelines for foreign investment in preference shares, which have come into effect from that date :

(a) Foreign investment coming as fully convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed.

(b) Foreign investment coming as any other type of preference shares (non-convertible, optionally convertible or partially convertible) would be considered as debt and shall require conforming to ECB guidelines / ECB caps.

(c) Any foreign investment as non-convertible or optionally convertible or partially convertible preference shares as on and up to April 30, 2007 would continue to be outside the sectoral cap till their current maturity.

(d) Issue of preference shares of any type would continue to conform to the guidelines of RBI/SEBI and other statutory bodies and would be subject to all statutory requirements.

3. Accordingly, it is clarified that with effect from May 1, 2007, only preference shares which are fully and mandatorily convertible into equity within a specified time would be reckoned as part of share capital and eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000.

4. Foreign investments in other types of preference shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as

debt and shall conform to External Commercial Borrowings (ECB) guidelines / caps. Accordingly, all the norms applicable for ECBs, viz. eligible borrowers, recognised lenders, amount and maturity, end use stipulations, etc. would apply. Since these instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.

5. It is further clarified that companies which have received funds from outside India for issue of partially/optionally convertible or redeemable preference shares on or up to April 30, 2007 may issue such instruments. Further, the existing investments in such preference shares which are not fully convertible may continue till their current maturity.

6. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 are being notified separately.

7. AD Category - I banks may bring the contents of the circular to the notice of their constituents 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 are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

**Salim Gangadharan**  
Chief General Manager

#### **Annex**

[A.P. (DIR Series) Circular No.73 dated 08.06.2007]

**Government of India**

**Ministry of Finance**

**Department of Economic Affairs**

#### **PRESS NOTE - GUIDELINES FOR FOREIGN INVESTMENT IN PREFERENCE SHARES**

In supersession of Press Note [F.No.17/3/97-NRJ] dated 31st July, 1997 containing the guidelines for Indian Companies for mobilizing foreign investment through issue of preference shares for financial projects / industries, the following guidelines are prescribed with immediate effect:

1. Foreign investment coming as fully convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed.

June 14, 2007

2. Foreign investment coming as any other type of preference shares {non-convertible, optionally convertible or partially convertible) would be considered as debt and shall require conforming to ECB guidelines / ECB caps.

Any foreign investment as non-convertible or optionally convertible or partially convertible preference shares as on and up to today (30/4/ 2007) would continue to be outside the sectoral cap till their current maturity.

Issue of preference shares of any type would continue to conform to the guidelines of RBI/SEBI and other statutory bodies and would be subject to all statutory requirements.

Department of Economic Affairs, Ministry of Finance New Delhi: Vaisakha 10, 1929; April 30, 2007

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**RBI/2006-2007/435  
A.P. (DIR Series) Circular No.74**

**June 8, 2007.**

To  
All Category - I Authorised Dealer banks

Madam/Sir,

**Foreign Investments in Debentures —Revised Guidelines**

1. Attention of Authorised Dealers is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 as amended from time to time. In terms of Schedule 1 of the notification, a person resident outside India can purchase equity/preference/ convertible preference shares and convertible debentures issued by an Indian company.

2. It has been noticed that some Indian companies are raising funds under the FDI route through issue of hybrid instruments such as optionally convertible/partially convertible debentures which are intrinsically debt-like instruments. Routing of debt flows through the FDI route circumvents the framework in place for regulating debt flows into the country. It is clarified that henceforth, only instruments which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI Policy and eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000- RB dated May 3, 2000.

3. FIIs, registered with SEBI, would be eligible to invest as hitherto in listed non-convertible debentures/ bonds issued by Indian companies in terms of RBI/SEBI norms on investment in rupee debt instruments, including the ceilings prescribed from time to time.

4. It is further clarified that companies which have already received funds from outside India for issue of partially/optionally convertible instruments on or before June 7, 2007 may issue such instruments. Further, the existing investments in instruments which are not fully and mandatorily convertible into equity may continue till their current maturity.

5. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 are being notified separately.

June 14, 2007

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

7. 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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# CASE LAW

- Sh. Devinder K. Jain Vs. Union of India (UOI) and Ors.

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**Sh. Devinder K. Jain**

**Vs.**

**Union of India (UOI) and Ors.**

**IN THE HIGH COURT OF DELHI (WP(C) No. 695/2005)**

Decided On: 08.03.2007

**Counsels:**

For Appellant/Petitioner/Plaintiff: Y.K. Kapur, Adv.

For Respondents/Defendant: Ashish Rana and Rajeev Mehra, Advs. for the Respondent Nos. 1 and 2 and Rakesh Tiku, Adv. for the Respondent No. 3

**Applicable Acts/Rules/Orders:**

Companies Act, 1956 - Section 224 (7)

**FACTS, CONTENTIONS AND JUDGMENT**

1. This petition is directed against the approval granted by the Regional Director, Department of Company Affairs, Ministry of Finance, Government of India under Section 224 (7) of the Companies Act, 1956 (hereinafter referred to as 'the said Act') for removal of the statutory auditors [M/s Devinder K. Jain and Associates, Chartered Accountants, New Delhi] in respect of the company KEW Precision Parts (P) Ltd.
2. The grievance of the petitioner is that this removal of the statutory auditors of the company was not in accordance with law. His submission was that before removal, the approval of the Central Government was necessary, whereas in the present case, the decision for removal was taken prior to the approval taken from the Central Government. He placed reliance on a decision of this Court in the case of Basant Ram & Sons and Anr. v. Union of India and Ors. 2000 (4) Comp LJ 55 (Delhi).
3. The learned Counsel appearing on behalf of the company submitted that the procedure prescribed under Section 224 (7) of the said Act was followed in letter and spirit for removal of the petitioner as the statutory auditor of the company. He submitted that in the Board meeting held on 12.07.2004, a resolution was passed indicating the decision of the Board to remove the petitioner as the statutory auditor in as much as they had lost confidence in them. On 29.07.2004, the company moved an application before the Regional Director for the approval of the Central Government. The approval was granted by virtue of the impugned order dated 25.10.2004 passed by the Central Government acting through the said Regional Director on the ground that the company had lost faith and confidence in the statutory auditors and, therefore, they were permitted to proceed with the removal of the said auditors provided the same was passed in the General Meeting.

Thereafter, a General Meeting was held on 27.10.2004, whereby the statutory auditor was removed. So, according to the learned Counsel, the procedure of obtaining prior approval of the Central Government was followed and thereafter the statutory auditor was removed at a General Meeting held on 27.10.2004.

4. Considering the rival contentions of the parties, the petition was dismissed by the Hon'ble High Court on the following reasons:

a) First of all, the decision to remove the statutory auditors which was taken on 12.07.2004 was not taken in the General Meeting, but by the Board of Directors. This decision had no effect in law other than initiating the process of removal. After the Board decided on 12.07.2004 to proceed with the removal of the auditor, the company moved an application on 29.07.2004 before the Central Government seeking its approval under Section 224 (7) of the said Act. This approval was required to be taken prior to the removal of the statutory auditors in the General Meeting. The approval was granted and it is only after the grant of such approval that the petitioner was removed as the statutory auditor in the General Meeting held on 27.10.2004.

b) Secondly, the decision in *Basant Ram & Sons (supra)* does not help the cause of the petitioner in as much as that was a case where the removal was sought on the basis of a General Meeting held prior to the approval taken from the Central Government. The court observed that there was no statutory bar on a prior meeting being held, wherein the shareholders or the members approve the resolution for making the application to seek the previous consent of the Central Government. It was held that the Board of Directors were not authorised to remove the statutory auditors prior to expiry of its term except under the procedure provided under Section 224 (7) of the said Act. The facts of the present case are entirely different. The decision that was taken on 12.07.2004 at the Board Meeting had no effect until and unless prior approval of the Central Government and subsequent confirmation in the General Meeting was granted. The decision of 12.07.2004 was only for the purpose of moving the application before the Central Government for grant of approval to remove the statutory auditors. Unless a decision is taken in the Board Meeting, the company cannot act on its own and it is only to this effect that the decision of the Board Meeting can be viewed. Unlike the case in *Basant Ram (supra)*, in the present case, the General Meeting was held subsequent to the approval granted by the Central Government. Therefore, the present case is entirely distinguishable from that of *Basant Ram (supra)*.

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