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## CS Update

March 30, 2011

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- BY FOREIGN COMPANIES (FORM-44) – PROCEDURE SIMPLIFIED [MCA/08.3.2011]
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- MINISTRY OF CORPORATE AFFAIRS NOTIFIES SECTION 5, 6, 20, 29, 30 & 31 OF COMPETITION ACT, 2002 WITH EFFECT FROM JUNE 01, 2011 [MCA/04.3.2011]
- DIN PROCESS – SIMPLIFIED – REG. [MCA/04.03.2011]
- INDIAN ACCOUNTING STANDARDS CONVERGED WITH IFRS [MCA/25.02.2011]
- MCA GENERAL CIRCULAR No: 3/2011 DATED: 21<sup>ST</sup> FEBRUARY ON CLARIFICATION IN RESPECT OF CIRCULAR NO. 2/2011 DATED 8<sup>TH</sup> FEBRUARY, 2011 REGARDING DIRECTION UNDER SECTION 212(8) OF THE COMPANIES ACT, 1956 [MCA/25.02.2011]
- NEW FEATURE INCLUDED IN E-FORMS ON THE LLP PORTAL [WWW.LLP.GOV.IN/22.02.2011].
- LLP SHALL MANDATORILY FILE FORM 3 AND FORM 4 WITHIN 30 DAYS OF INCORPORATION & FORM 7 SHALL BE DIGITALLY SIGNED BY APPLICANT'S OWN DSC [WWW.LLP.GOV.IN/22.02.2011].
- MCA NOTIFICATIONS ON GENERAL EXEMPTIONS U/S 211 AND APPLICABILITY OF SCH. XIII IN CASE OF UNLISTED COMPANIES
- EXEMPTION UNDER SECTION 211 OF COMPANIES ACT 1956 [MCA NOTIFICATION/DATE: 08.02, 2011]
- EASY EXIT SCHEME, 2011 [MCA/ DATE:03.02. 2011]

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- ADDENDUM TO CIRCULAR NO. CIR/ISD/1/2011 DATED MARCH 23, 2011 [SEBI/23.03.2011]
- UNAUTHENTICATED NEWS CIRCULATED BY SEBI REGISTERED MARKET INTERMEDIARIES THROUGH VARIOUS MODES OF COMMUNICATION [SEBI/23.03.2011]
- ADVICE TO INTERMEDIARIES [SEBI/23.03.2011]

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PREVIOUS ISSUES ARE AVAILABLE AT THE FOLLOWING LINK:

<http://www.icsi.edu/Member/CSUpdate/tabid/1635/Default.aspx>

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# FROM ICS!





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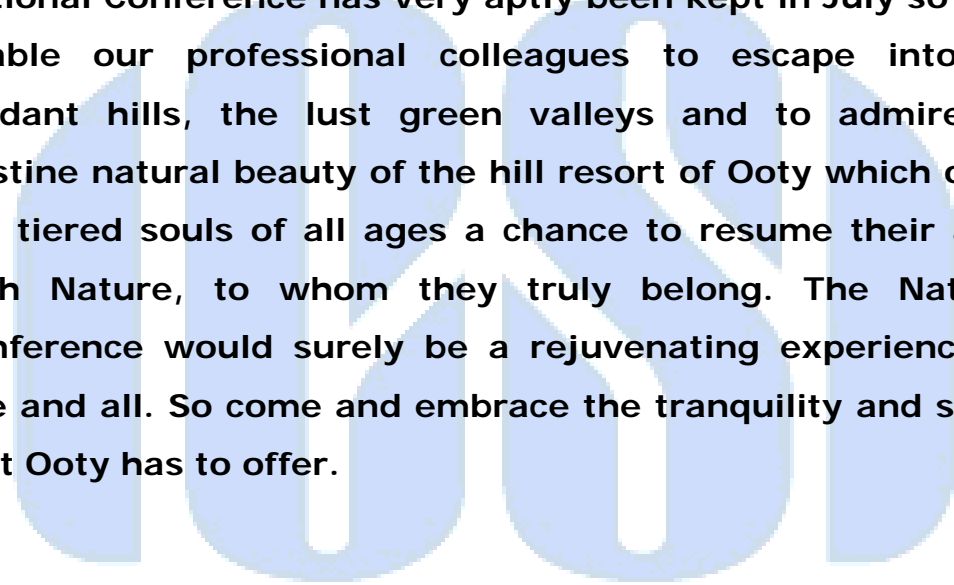
March 30, 2011



## 12th NATIONAL CONFERENCE OF PRACTICING COMPANY SECRETARIES

The 12<sup>th</sup> National Conference of Practicing Company Secretaries is scheduled to be held in July, 2011 at Ooty, Tamil Nadu.

Located in the midst of four high hills; Doddabetta, Snowdon, Elk hill and Club Hill in the Nilgiris, Ooty is a picturesque hill station that is pleasant all through the year. The time of the National Conference has very aptly been kept in July so as to enable our professional colleagues to escape into the verdant hills, the lush green valleys and to admire the pristine natural beauty of the hill resort of Ooty which offers the tired souls of all ages a chance to resume their affair with Nature, to whom they truly belong. The National Conference would surely be a rejuvenating experience for one and all. So come and embrace the tranquility and solace that Ooty has to offer.



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## 39<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

### SUGGESTIONS ON THEME AND SUB-THEMES

The 39<sup>th</sup> National Convention of Company Secretaries is scheduled to be held on October 13-15, 2011 at Agra. Suggestions are invited for theme and sub-themes to be deliberated at the National Convention.

The person whose theme alongwith its sub-themes is selected shall get exemption from paying the delegate registration fee for the Convention. The decision of the Institute shall be final in all respects. Interested persons may send their suggestions so as to reach by April 25, 2011 to :

Sutanu Sinha

Director (Academics)

The Institute of Company Secretaries of India

ICSI House, 22, Institutional Area

Lodi Road, New Delhi 110 003

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## EXPOSURE DRAFTS OF PROPOSED LIMITED REVISIONS TO 'SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS (SS-1)', 'SECRETARIAL STANDARD ON GENERAL MEETINGS (SS-2)' AND 'SECRETARIAL STANDARD ON MINUTES (SS-5)'

**(LAST DATE FOR COMMENTS: APRIL 30, 2011)**

The following are the texts of the Exposure Drafts of the proposed limited revisions to '**Secretarial Standard on Meetings of the Board of Directors (SS-1)**', '**Secretarial Standard on General Meetings (SS-2)**' and '**Secretarial Standard on Minutes (SS-5)**', issued by the Secretarial Standards Board of the Institute of Company Secretaries of India, for comments. The comments and suggestions on the Exposure Drafts may be sent to **Mr. Gopal Chalam, Dean, ICSI-CCGRT at Plot No-101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai-400 614** (E-mail: [ccgrt@icsi.edu](mailto:ccgrt@icsi.edu)) with a copy to [alka.kapoor@icsi.edu](mailto:alka.kapoor@icsi.edu) so as to reach by **April 30, 2011**.

### LIMITED REVISION of SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS (SS-1)

The Secretarial Standard on Meetings of the Board of Directors (SS-1) shall be modified as under:

Existing Definitions in SS-1	Amended Definitions of the proposed SS-1	Rationale
"Interested Director" means a Director whose presence cannot count for constituting a quorum and who can neither participate in the discussion nor vote on an item of business since he is, directly or indirectly, concerned or interested in the contract or arrangement forming part of the business under consideration by the Board.	"Interested Director" means a Director <u>who is in any way</u> , directly or indirectly, concerned or interested in a contract or arrangement <u>entered into or to be entered into, by or on behalf of the company</u> , forming part of the business under consideration by the Board and <u>hence his presence cannot be counted</u> for constituting a quorum and <u>he</u> can neither participate in the discussion nor vote on <u>that</u> item of business.	In line with the definition provided in Section 300 of the Companies Act, 1956
"Unpublished price sensitive information" means any information which is material	"Unpublished price sensitive information" means any information which is material and	In line with the definition provided in the SEBI Insider Trading



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<p>and is generally not known or is not published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company. Such information includes financial results, intended declaration of dividend, announcement of bonus, rights shares and other corporate benefits, issue of securities, any major expansion plans or execution of new projects, amalgamation, merger and takeovers, de-mergers, compromise or arrangement with creditors and members, disposal of the whole or substantially the whole of the undertaking, any changes in policies, plans or operations of the company, and such other information as may affect the earnings of the company.</p>	<p>is generally not known or is not published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company. Such information includes financial results, intended declaration of dividend, announcement of bonus, rights shares and other corporate benefits, issue of securities, <u>buy back of securities</u>, any major expansion plans or undertaking or proposal to undertake new projects, joint venture agreements, compromise or arrangement with creditors and members or restructuring, disposal of the whole or substantially the whole of the undertaking, any changes in policies, plans or operations of the company, and such other information as may affect the earnings of the company.</p>	Regulations
<b>Existing Para 1 of SS-1</b>	<b>Amended Para 1 of the proposed SS-1</b>	<b>Rationale</b>
1. Convening a Meeting	1. Convening a Meeting <u>of the Board</u>	In line with other headings
<b>Existing Para 1.2.4 of SS-1</b>	<b>Amended Para 1.2.4 of the proposed SS-1</b>	<b>Rationale</b>
<p>Unless the Articles prescribe a longer notice period, Notice should be given at least fifteen days before the date of the Meeting.</p> <p><u>Notice need not be given of an adjourned Meeting other than a Meeting that has been adjourned "sine die".</u> However, Notice of the reconvened adjourned Meeting should be given to <u>those Directors who did not</u></p>	<p>Unless the Articles prescribe a longer notice period, Notice should be given at least fifteen days before the date of the Meeting.</p> <p>Notice of the reconvened adjourned Meeting should be given to <u>all Directors including those who did not attend the Meeting</u> which had been adjourned.</p>	Modified to ensure notice to all directors



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attend the Meeting which had been adjourned.		
Existing Para 1.2.5 of SS-1	Amended Para 1.2.5 of the proposed SS-1	Rationale
No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given.	No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given, <u>unless the majority of directors consent for shorter notice.</u>	In line with para 1.2.8
Existing Para 1.2.9 of SS-1	Amended Para 1.2.9 of the proposed SS-1	Rationale
Any <u>supplementary</u> item not <u>originally</u> included in the Agenda may be taken up for consideration <u>with the permission of the Chairman and with the consent of the majority of the Directors present in the Meeting.</u> However, no supplementary item which is of significance or is in the nature of Unpublished price sensitive information should be taken up by the Board without prior written Notice.	Any item not included in the Agenda may be taken up for consideration <u>with the permission of the Chairman.</u>	In line with the business practices in case of exigencies.
Existing Para 2.1 of SS-1	Amended Para 2.1 of the proposed SS-1	Rationale
The Board should meet at least once in every three months, with a maximum interval of 120 days between any two Meetings <u>such that at least four Meetings are held in each year.</u>	The Board should meet at least once in every three months, <u>such that at least four Meetings are held in each year</u> with a maximum interval of 120 days between any two consecutive Meetings.	Rearrangement
Existing Para 3.1.1 of SS-1	Amended Para 3.1.1 of the proposed SS-1	Rationale
Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not so present.	Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not so present.	Shifted from para 3.1.2. Rearrangement
The Quorum for a Meeting of the Board should be one-third	The Quorum for a Meeting of the Board should be one-third of the	



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of the total strength of the Board (any fraction contained in that one-third being rounded off as one), or two Directors, whichever is higher. Where the requirements for the Quorum, as provided in the Articles, are stricter, the Quorum should conform to such requirements.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, should be the quorum during such time.

total strength of the Board (any fraction contained in that one-third being rounded off as one), or two Directors, whichever is higher.

Where the requirements for the Quorum, as provided in the Articles, are stricter, the Quorum should conform to such stricter requirements.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, should be the quorum during such time.

If a Meeting of the Board could not be held for want of quorum, then, unless the Articles otherwise provide, the Meeting should automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a public holiday, to the next succeeding day which is not a public holiday, at the same time and place.

Existing Para 3.1.2 of SS-1	Amended Para 3.1.2 of the proposed SS-1	Rationale
<p>Where the number of Directors is reduced below the minimum fixed by the Articles, no business should be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.</p> <p><u>If a Meeting of the Board could not be held for want of quorum, then, unless the Articles otherwise provide, the Meeting should automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a public holiday, to the</u></p>	<p>Where the number of Directors is reduced below the minimum fixed by the Articles, no business should be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.</p>	<p>Shifted to para 3.1.1. Rearrangement</p>



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<p><u>next succeeding day which is not a public holiday, at the same time and place.</u></p>		
<p><b>Existing Para 8.4 of SS-1</b></p>	<p><b>Amended Para 8.4 of the proposed SS-1</b></p>	<p><b>Rationale</b></p>
<p>The Chairman should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.</p>	<p>The Chairman should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.</p>	<ul style="list-style-type: none"> <li>To ensure consistency, reference to minutes of meetings of Committee is included</li> </ul>
<p>While the law requires that Minutes of the proceedings should be entered in the Minutes Book within thirty days of the Meeting, there is no prescribed time limit within which such Minutes have to be signed. They could be signed beyond a period of thirty days if the succeeding Meeting is held after a period of thirty days from the date of the earlier Meeting. However, it is also not obligatory to wait for the next Meeting in order to have the Minutes of the previous Meeting signed. Such Minutes may be signed by the Chairman of the Meeting at any time before the next Meeting is held.</p>	<p>While the law requires that Minutes of the proceedings should be entered in the Minutes Book within thirty days of the Meeting, there is no prescribed time limit within which such Minutes have to be signed. They could be signed beyond a period of thirty days if the succeeding Meeting is held after a period of thirty days from the date of the earlier Meeting. However, it is also not obligatory to wait for the next Meeting in order to have the Minutes of the previous Meeting signed. Such Minutes may be signed by the Chairman of the Meeting at any time before the next Meeting is held.</p>	<ul style="list-style-type: none"> <li>Clarification regarding the entitlement of a director to the minutes even if he ceases to be a director subsequently.</li> </ul>
<p>The Minutes of Meetings of the Board can be inspected only by the Directors. While the Auditor or Cost Auditor of the company or Secretary in whole-time practice appointed by the company can also inspect the Minute Books in the course of audit or certification, a member of the company has no right to inspect the Minutes of Meetings of the Board or any Committee thereof. Officers of the Registrar of Companies, or other Government or</p>	<p>The Minutes of Meetings of the Board <u>and any committee thereof</u> can be inspected only by the Directors. <u>A director who has participated in a meeting of the Board or any committee thereof is entitled to offer his comments on the draft minutes of that meeting and also entitled to inspection of the minutes of the meetings during the period of his directorship even if he ceases to be a director subsequently.</u> While the Auditor or Cost Auditor of the company or Secretary in whole-time practice appointed by the company can also inspect the Minute Books in the course of audit or certification,</p>	



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regulatory bodies duly authorised in this behalf under law, during the course of an inspection, can also inspect the Minutes.	a member of the company has no right to inspect the Minutes of Meetings of the Board or any Committee thereof. Officers of the Registrar of Companies, or other Government or regulatory bodies duly authorised in this behalf under law, during the course of an inspection, can also inspect the Minutes.	
Existing Pt. 11 in <i>Annexure 'A'</i> of SS-1	Amended Pt. 11 in <i>Annexure 'A'</i> of SS-1	Rationale
Receiving notice of disclosure of Directors' interest	Notice of disclosure of Directors' interest in a particular transaction.	Clarification
Existing Pt. 37 in <i>Annexure 'A'</i> of SS-1	Amended Pt. 37 in <i>Annexure 'A'</i> of SS-1	Rationale
Events which are significant or have material commercial / financial implications, such as:	Events which are significant or have material commercial / financial implications, such as:  <u>(r) performance review of the subsidiary companies.</u>	Addition

## LIMITED REVISION of SECRETARIAL STANDARD ON GENERAL MEETINGS (SS-2)

The Secretarial Standard on General Meetings (SS-2) shall be modified as under:

Existing Definition in SS-2	Amended Definition of the proposed SS-2	Rationale
"Member" means any person who agrees, either by subscribing to the Memorandum of Association of the company or by applying in writing, to become a Member of the company and whose name is entered either in the Register of Members of the company or in the records of the depository as a beneficial owner in respect of the equity shares of the company held by him.	"Member" means any person who agrees, either by subscribing to the Memorandum of Association of the company or by applying in writing, to become a Member of the company and whose name is entered in the Register of Members of the company or in the records of the depository as a beneficial owner in respect of the equity shares of the company held by him.	Clarification



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Existing Para 1.2.6 of SS-2	Amended Para 1.2.6 of the proposed SS-2	Rationale
<u>In the case of listed companies with more than 5,000 Members, an abridged version of the Notice, listing the items of business and the day, date, time and venue of the Meeting, should be published in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.</u>	<u>In the case of listed companies, the Notice, listing the items of business and the day, date, time and venue of the Meeting, should be hosted on the website of the company.</u>	In case of large companies there could be several States where more than 1000 members reside and such companies may end up publishing their general meeting notices in newspapers of numerous States. Hence, modified
Existing Para 1.2.10 of SS-2	Amended Para 1.2.10 of the proposed SS-2	Rationale
A Meeting convened upon due Notice should not be postponed or cancelled.  If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, <u>the Board may defer the Meeting. The Meeting should be reconvened</u> after giving not less than seven days fresh Notice published in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.	A Meeting convened upon due Notice should not be postponed or cancelled.  If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, <u>the Board may reconvene the Meeting</u> after giving not less than seven days intimation published in a newspaper having a nation-wide circulation and also hosted on the <u>website of the company.</u>	In line with amendment in Para 1.2.6
Existing Para 2.1 of SS-2	Amended Para 2.1 of the proposed SS-2	Rationale
Every <u>public company having a share capital</u> and every public company limited by guarantee and having a share capital should, after one month but not later than six months from the date on which it is entitled to commence business, hold a Meeting called the Statutory Meeting.	Every <u>public company limited by shares</u> and every public company limited by guarantee and having a share capital should, after one month but not later than six months from the date on which it is entitled to commence business, hold a Meeting called the Statutory Meeting.	In line with Section 165 of the Companies Act
Existing Para 7.4.1 of SS-2	Amended Para 7.4.1 of the	Rationale



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	proposed SS-2	
In addition to the Member appointing a Proxy, the Proxy-holder also should <u>sign the instrument of Proxy.</u>	<u>The proxy holder should prove his identity at the time of attending the meeting.</u>	All Proxy holders signing the instrument of proxy may not be practical. Hence, modified.
Existing Para 7.5.2 of SS-2	Amended Para 7.5.2 of the proposed SS-2	Rationale
If an undated Proxy, which is otherwise complete in all respects, is lodged within the prescribed time limit, it should be considered valid.  <u>If a company receives multiple Proxies for the same holdings of a Member, which are either not dated or bear the same date without specific mention of time, all such multiple Proxies should be treated as invalid.</u>	If an undated Proxy, which is otherwise complete in all respects, is lodged within the prescribed time limit, it should be considered valid.	Rearrangement
Existing Para 7.5.3 of SS-2	New Para 7.5.3 of the proposed SS-2	Rationale
-----	<u>If a company receives multiple Proxies for the same holdings of a Member, the proxy which is dated last is considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies should be treated as invalid.</u>	Rearrangement
Existing Para 12.1 of SS-2	Amended Para 12.1 of the proposed SS-2	Rationale
The entire Auditor's Report including the Statement pursuant to the <u>Manufacturing and Other Companies Auditor's Report Order</u> should be read at the Annual General Meeting.	The entire Auditor's Report including the Statement pursuant to the <u>Companies (Auditor's Report) Order, 2003 (CARO)</u> should be read at the Annual General Meeting.	MAOCARO repealed and replaced by CARO
Existing Para 16.2 of SS-2	Amended Para 16.2 of the proposed SS-2	Rationale
<u>The number of Members required to form the</u>	The fact that the required Quorum was present should be	There should not be any need for the minutes to



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<p><u>Quorum</u> and the fact that the required Quorum was present should be recorded.</p>	<p>recorded.</p>	<p>state the number of members required to form the quorum since the same is a fixed number and is prescribed under the Companies Act and/or the Articles of Association of the company.</p>
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**LIMITED REVISION  
of  
SECRETARIAL STANDARD ON MINUTES (SS-5)**

The Secretarial Standard on Minutes (SS-5) shall be modified as under:

Existing Para 5.1 of SS-5	Amended Para 5.1 of the proposed SS-5	Rationale
<p>Within fifteen days from the date of the conclusion of the Meeting of the Board or Committee the draft Minutes thereof should be circulated to all the members of the Board or the Committee, as the case may be, for their comments.</p> <p>The directors should forward their comments on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.</p>	<p>Within fifteen days from the date of the conclusion of the Meeting of the Board or Committee the draft Minutes thereof should be circulated to all the members of the Board or the Committee, as the case may be, for their comments.</p> <p>The directors should forward their comments on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.</p> <p><u>A director who has participated in a meeting of the Board or any committee thereof is entitled to offer his comments on the draft minutes of that meeting even if he ceases to be a director subsequently.</u></p>	<p>Clarification regarding the entitlement of a director to the minutes even if he ceases to be a director subsequently.</p>



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Existing Para 7.1 of SS-5	Amended Para 7.1 of the proposed SS-5	Rationale
<p>Directors are entitled to inspect Minutes of all Meetings. Members are entitled to inspect the Minutes of all General Meetings.</p> <p>Unless the Articles otherwise provide, a member has no right to inspect the Minutes of Meetings of the Board or Committee.</p> <p>When a member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company should furnish the same within seven days, subject to payment of such fee as may be prescribed.</p> <p>Extracts of the Minutes should be given only after the Minutes have been duly signed. However, certified copies of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairman, if the draft of that Resolution had been placed at the Meeting.</p> <p>The Auditor or Cost Auditor or the Practising Company Secretary appointed by the company may inspect the Minutes in the course of audit or certification.</p> <p>Officers of the Registrar of Companies, or other Government or regulatory bodies duly authorised in this behalf under law, during the course of an inspection, can also inspect the Minutes.</p>	<p>Directors are entitled to inspect Minutes of all Meetings. Members are entitled to inspect the Minutes of all General Meetings.</p> <p>Unless the Articles otherwise provide, a member has no right to inspect the Minutes of Meetings of the Board or Committee.</p> <p>When a member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company should furnish the same within seven days, subject to payment of such fee as may be prescribed.</p> <p><u>A director who has participated in a meeting of the Board or any committee thereof is entitled to inspection of the minutes of the meetings during the period of his directorship even if he ceases to be a director subsequently.</u></p> <p>Extracts of the Minutes should be given only after the Minutes have been duly signed. However, certified copies of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairman, if the draft of that Resolution had been placed at the Meeting.</p> <p>The Auditor or Cost Auditor or the Practising Company Secretary appointed by the company may inspect the Minutes in the course of audit or certification.</p> <p>Officers of the Registrar of Companies, or other Government or regulatory bodies duly authorised in this behalf under law, during the course of an inspection, can also inspect the Minutes.</p>	<p>Clarification regarding the entitlement of a director to the minutes even if he ceases to be a director subsequently.</p>

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# CS Update

March 30, 2011



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## COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMMES BY THE MEMBERS

The Council of the Institute at its 200<sup>th</sup> Meeting held on March 18, 2011 at New Delhi amended the Guidelines for Compulsory Attendance of Professional Development Programmes by the Members to provide as under:

1.	Next block of three years	April 01, 2011 to March 31, 2014
2.	Min. number of Programme Credit Hours (PCH) to be acquired by Members in Practice	15 PCH in each year or 50 PCH in a block of three years w.e.f April 01, 2011
3.	Min. number of PCH to be acquired by Members in Employment (i.e. members in whose name Form 32 has been filed to work as Company Secretary under the provisions of Sec. 383A of the Companies Act, 1956)	10 PCH in each year or 35 PCH in a block of three years w.e.f April 01, 2011
4.	Min. number of PCH to be acquired by Members above the age of 60 years	Presently the members of the age of 65 years are not required to obtain PCH. This age limit stands reduced to 60 years and the members above the age of 60 years shall be required to obtain 50% of the PCH required to be obtained by the members below 60 years w.e.f April 01, 2011.
5.	Members failing to obtain the mandatory PCH upto March 31, 2011	Provided with a shortfall upto 10 PCH and required to compensate by obtaining atleast 5 additional PCH on pro rata basis in the first year of the next block of three years commencing from April 01, 2011.
6.	Members who have not obtained any PCH during the block ending on March 31, 2011	Members seeking renewal of CoP to provide an explanation for non compliance with the Guidelines – to be decided on case to case basis.
7.	Carry forward of the excess PCH if the member has already completed	The Guidelines for Compulsory Attendance of Professional



# CS Update

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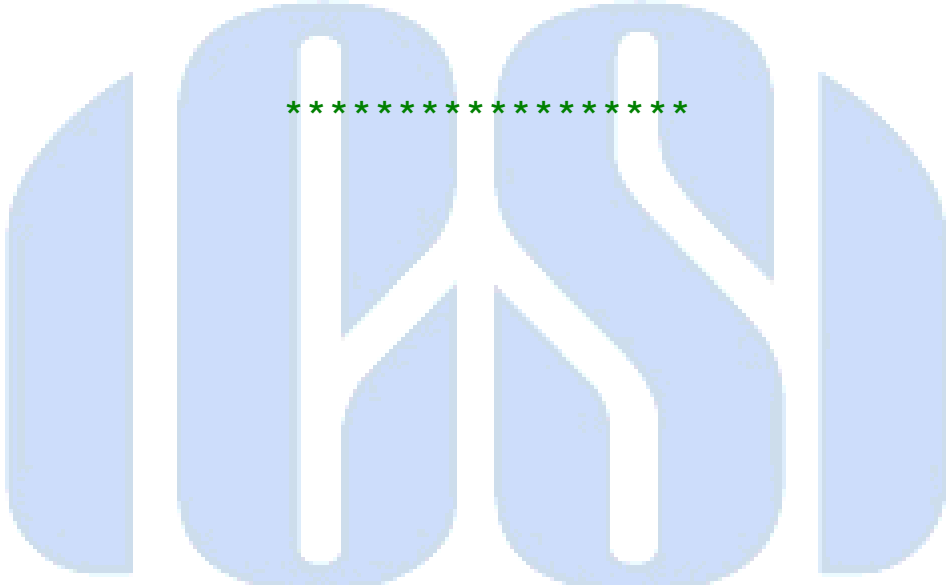
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	<p>the mandatory PCH upto December 31, 2010 and continued to attend Professional Development Programmes during January – March, 2011</p>	<p>Development Programmes by the Members do not provide for carry forward of PCH from one block of three years to the other. If any member had obtained the mandatory PCH upto December 31, 2010 and continued to attend Professional Development Programmes during January – March, 2011, then in such case the PCH obtained by such member during January – March, 2011 would be treated as having been obtained in the first year of the next block commencing from April 01, 2011.</p>
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## **ATTENTION PROFESSIONAL COLLEAGUES IN PRACTICE**

### **IMPORTANT DECISIONS AT THE 54<sup>TH</sup> MEETING OF THE PCS COMMITTEE HELD ON FEBRUARY 17, 2011 AT NEW DELHI**

**WHETHER A LEGAL OPINION GIVEN BY A COMPANY SECRETARY IN PRACTICE AMOUNTS TO PRACTICE OF LAW**

In the light of Section 33 of the Advocates Act, 1961 read with Section 2(2) of the Company Secretaries Act, 1980 and various provisions of the Income Tax Act, 1961 (Sec. 288(2) in particular) Company Secretaries while authorised to appear before the Income Tax Authorities / Income Tax Officer, it is well within their authorization to give opinion on any or all matters pertaining to such authorization including opinion, legal or otherwise.

**WHETHER A CLIENT COMPANY CAN PUT A PCS'S NAME ON THEIR WEBSITE AS CORPORATE LEGAL ADVISOR**

**The member may be allowed to permit the client company to put his name on its website under the following style subject to section 7 of the Company Secretaries Act, 1980:**

**"Corporate Legal Advisor**

**Mr. / Ms. XYZ, Company Secretary in Practice (ACS / FCS No. .... CoP No.....)"**

**RECOGNITION FOR PCS TO ISSUE ANNUAL ACTIVITY CERTIFICATE AS PROVIDED BY THE RBI IN ITS CIRCULAR NO. 23 DATED 30.12.2009**

**The RBI had already vide its letter dated April 19, 2001 clarified that all certificates, which a Practising Chartered Accountant can issue as documentary evidence in support of certain applications, may also be issued by a Company Secretary in Whole-time Practice under the provisions of the Foreign Exchange Management Act, 1999.**



# CS Update

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## CORE GROUP FOR CAPACITY BUILDING OF CS IN THE AREA OF SMALL &

### MEDIUM ENTERPRISES

A core group has been constituted for formulating a detailed report on areas of practice for company secretaries in the MSME sector comprising S/Shri Vikas Khare, Atul H Mehta, B Narasimhan, S N Ananthasubramanian, Council Members, The ICSI.

### USE OF DESIGNATION BY ASSOCIATES OF A FIRM OF COMPANY SECRETARIES WHO ARE NOT PARTNERS OF THE FIRM

Associates of a Firm of Company Secretaries who are not partners of the firm may sign as Associates of the firm only if the firm takes responsibility for certification of documents certified by the associate.

### WHETHER THE MEMBERS ARE ALLOWED TO USE THEIR INITIALS IN DEVANAGRI SCRIPT FOR APPROVAL OF FIRM NAMES

There is no provision in the Act or in the Regulation or in the Guidelines framed by the Council. But as Hindi in Devnagri Script is the national language, the members of the Institute can be permitted to use their initials in 'Devanagri script' for approval of the firm name. However, in sync with the present practice the initials in Devanagri Script should also be accompanied by 'English' for the purpose of verification and records."

### USAGE OF THE EXPRESSION "ISO CERTIFIED CS FIRM" BY A FIRM OF COMPANY SECRETARIES

A firm of Company Secretaries can get itself certified but cannot use the expression "ISO certified CS firm" after the firm name.

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# CS Update

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## PMQ COURSE IN CORPORATE GOVERNANCE

### ENHANCEMENT OF FEES

The Council at its 197<sup>th</sup> Meeting held on December 15, 2010 felt that honorarium be paid to the Guides for dissertation and project report under PMQ Course in Corporate Governance. With a view to meet the expense on honorarium to be paid to the Guide and to meet the increased costs, the Council has decided to enhance the **fee for PMQ Course in Corporate Governance with effect from January 1, 2011 to Rs.25,000/-** for the entire course payable as under :

Rs.12500/- payable at the time of registration for the course.

Rs.12,500/- payable after completion of Part I and before commencement of Part II

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## INSTITUTE'S RECENT PUBLICATIONS

- Business @ Governance & Sustainability
- Guidance Note on Board Processes
- Independent Directors-A research Study on Corporate Practice in India
- Corporate Social Responsibility –Research Study of Corporate Practice in India
- DNA of Integrity
- Role of Company Secretaries-A New Perspective
- A Guide to Company Secretary in Practice
- Guidance Note on Related Party Transactions
- Guidance Note on Listing of Corporate Debt
- Guidance Note on Corporate Governance Certificate
- Referencer on Secretarial Audit
- Referencer on Filing and Filing of E-Forms 23AC and 23ACA
- Establishment of Branch, Liaison & Project Offices in India
- Handbook on Mergers, Amalgamation and Takeover

e Book Store - buy Online [Journals & Publications](#)

or

**Contact :** Shri Harish Chander Joshi,  
Admn. Officer(store),  
The Institute of Company Secretaries of India,  
C-37, Sector 62,  
Institutional Area,  
NOIDA (U.P.)

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# CS Update

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# MCA UPDATE





# CS Update

March 30, 2011



**"REVISED SCHEDULE VI IS APPLICABLE FOR THE FINANCIAL YEAR COMMENCING ON OR AFTER 1.4.2011".**

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (ii)]**

**GOVERNMENT OF INDIA  
Ministry of Corporate Affairs  
NOTIFICATION**

New Delhi, dated the 2011

G.S.R (E)- In exercise of the powers conferred by clause(a) of sub-section(1) of section 642 read with sub-section(1) of section 210A and sub-section (3C) of section 211 of the Companies Act, 1956, (1 of 1956), the Central Government hereby makes the following amendment to paragraph 2 of the notification No.447(E) dated the 28th February, 2011.:-

"The notification shall come into force for the Balance Sheet and Profit and Loss Account to be prepared for the financial year commencing on or after 1.4.2011".

[F. No. 2/6/2008-C.L-V]

**Avinash K. Srivastava  
Joint Secretary**

**Note:** - The principal notification was published in the Gazette of India, Extraordinary, vide G.S.R. No.414, dated the 21st March, 1961 last amended vide S.O. No.447 (E) dated the 28th February, 2011.

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## PROSECUTION OF DIRECTORS – REGARDING

General Circular No. 08/2011

No.2/13/2003/CL- V  
Government of India  
Ministry of Corporate Affairs

5th Floor, Shastri Bhavan,  
Dr. Rajendra Prasad Road,  
New Delhi-110001,  
Dated the 25th March, 2011

To,

All Regional Directors,  
All Registrars of Companies,  
All Official Liquidators.

### Sub: Prosecution of Directors – Regarding

Sir,

Penal actions for defaults committed under the Companies Act, 1956 are either to be taken against an "officer in default" or a "director(s)" or "persons" as provided in the relevant penal provisions of the Act. Section 5 of the Companies Act, 1956. defines officer in default and the Directors are also liable for compliance of various provisions of the Act.

2. It is noticed that penal actions are also initiated against certain Directors who are not charge with the responsibility, particularly in following cases : --

(a) For listed companies Securities and Exchange Board of India (SEBI) requires nomination of certain Directors designated as Independent Directors.

(b) For public sector undertakings, respective Government nominates Directors on behalf of the respective Government.

(c) Various public sector financial institutions having participation in equity of a company also nominate Directors to the Board of such companies.



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(d) Directors nominated by the Government u/s 408 of the Companies Act, 1956.

In supersession of all earlier circulars, it is clarified that Registrar of Companies should take extra care in examining the cases where above Directors are also identified as Officer in default. No such Directors as indicated above shall be held liable for any act of omission or commission by the company or by any officers of the company which constitute a breach or violation of any provision of the Companies Act, 1956, and which occurred without his knowledge attributable through Board process and without his consent or connivance or where he has acted diligently in the Board process. The Board process includes meeting of any committee of the Board and any information which the Director was authorised to receive as Director of the Board as per the decision of the Board.

No.2/13/2003/CL- V

3. It is further clarified that before taking penal action under the Companies Act, 1956 against the Directors the following compliances should be verified by Registrar of Companies: -

(a) A director resigns and the company does not file Form 32 as required in terms of Section 302(2) of the Act. In case, the director concerned has informed/endorsed a copy of his resignation to the Registrar of Companies, the Registrar should enquire into such cases and try to find out whether such director has actually resigned or not.

(b) In case the status of a director, i.e. whether he is a nominee director or not, is not reflected in the Annual Return or other documents of the company, available with Registrar, the same should be cross checked with the Annual Report filed by the company;

(c) The timing of the commission of offence is also material to identify the director's responsibility; and Form 1AB should also be checked in case any person has been charged by the Board under Section 5(f) with the responsibility of complying with some particular provision or in case any director has been specified by the Board under Section 5(g) of the Act.

(d) Special Directors appointed by BIFR under section 16 (6)(b) of SICA 1985, shall not incur any obligation or liability for anything done or omitted to be done in good faith and in discharge of duties. Hence they shall be excluded in the list of officers in default



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4. For default u/s 209(5), 209(6), 211 and 212 of the Act, the following persons shall be the 'officers in default for the purpose of prosecution under these provisions :-

(a) Where there is a Managing Director or Manager, the Managing Director or the Manager as the case may be and in addition, the Company Secretary appointed u/s 383A or the person who has been charged with work of maintenance and preparation of Annual Accounts in compliance with aforesaid provisions.

(b) Where there is no Managing Director or Manager, every director and the Company Secretary appointed u/s 383A of the Act .

No.2/13/2003/CL- V

(c) Any persons amongst officers and employees other than Managing Director/Manager/Directors who has been charged by the Managing Director/Manger or Board of Directors with specific responsibility of complying with aforesaid provisions, in addition to Managing Director/Manager/Board of Directors as the case may be.

(d) Directors including Non-Executive Directors, officers and employees not connected with responsibility with the above provisions should not be arrayed as delinquent directors.

(e) While considering the non-executive directors for including in the list of officers in default for a particular violation of the Companies Act, it should be examined whether the violation has taken place with his knowledge attributable through board process, with his consent or connivance and whether he acted diligently or not.

(f) Where prosecution is required to be filed against any Government company, its directors/officers and Member of Parliament and Member of Legislator under the Companies Act, 1956, Registrar of Companies should seek prior authorization of Central Government in terms of Section 621 of the Act

5. There should be proper application of mind on the part of Registrar of Companies in deciding whether a person to be implicated is an 'officer in default' by examining the Annual Return, Form 32(s) and DIN database available in the Registry. The guidelines issued herein above should be applied and wrongful prosecution should be avoided. Wherever the Registrar of Companies have doubt as to whether director/officer can be held liable after applying the above parameters, they should refer to



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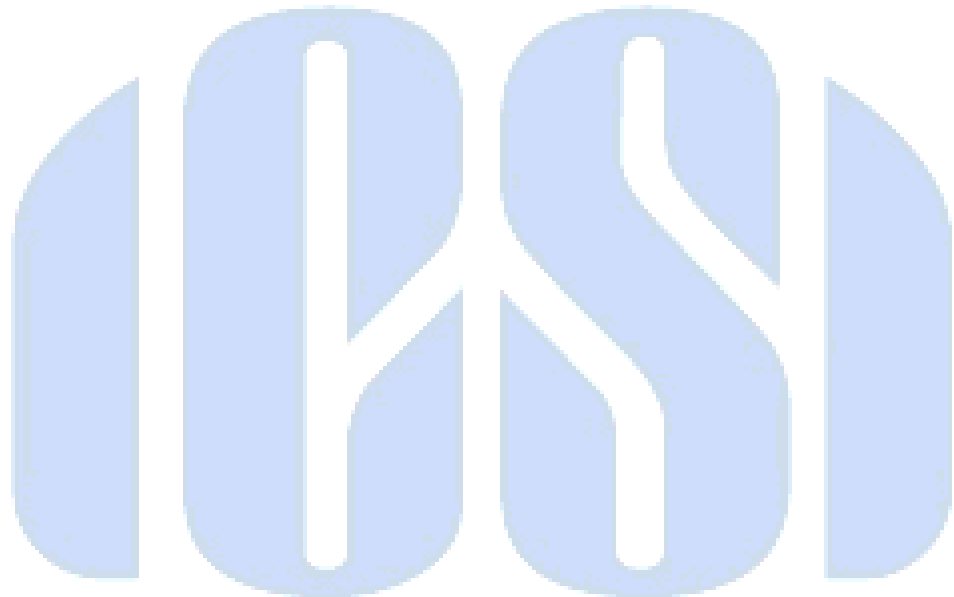
Regional Director, who shall guide Registrar of Companies in the matter.

6. All cases which are pending against Directors of companies above must be relooked at, based on these parameters and a report must be sent by each Regional Director with specific recommendation in case the proceedings are proposed to be discontinued.

Yours faithfully

(Seema Rath)  
Asstt Director  
Tel. No. 23387263

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## THE COMPANIES (DIRECTOR IDENTIFICATION NUMBER) AMENDMENT RULES, 2011

Central Government notified amendment to Companies (Director Identification Number) Rules, 2006 with effect from 27<sup>th</sup> March, 2011. The synopsis of amended provisions are as follows:

### Rule 3. Application and allotment of Director Identification Number

- As per the amendment to sub-rule (3) the applicant shall download Form No. DIN-1 from the MCA portal, fill-in the required particular therein, scan and attached copies of the prescribed documents, namely- photograph; proof of identity; proof of residence; verification and signing of annexure 1. The form can be digitally signed by a CA or a CS or a CWA holding a COP. The form can also be digitally signed by a CS in full time employment of the company or MD or Director of the company. The DIN form can also be digitally signed by the applicant by using his or her own DSC.

- As per the amendment to sub-rule (4) the applicant shall submit the Form No. DIN-1 and pay the requisite amount of fees through online mode and the system after processing shall automatically generate the approved DIN.

- As per the amendment to sub-rule (7) the Central Govt may give direction for rectification of defect or incompleteness of application within 15 days. In the event, such defect or incompleteness has not been rectified by the applicant, the Central Govt either reject or treat such application as invalid.

### Rule 7. Duty of Director to intimate changes of particular

- As per the amendment to sub-rule (2) and (3) the applicant shall download Form No. DIN-4 from the MCA portal, fill-in the required particular therein, scan and attached copies of the annexure 2. The form needs to be digitally signed by a CA or a CS or a CWA holding a COP. There shall be no fee for intimating the changes in particulars in DIN-4.

### Rule 8. Penal action against the applicant in case of false information-

- As per the amendment a new Rule 8 has been inserted and provides that Section 628 of the Companies Act, 1956 shall applicable in respect of any false information furnished by any person in the DIN application or changes thereof.

Click here to view: 26/03/2011 [G.S.R. - dated 26.03.2011 - Rules to amend the Companies \(Director Identification Number\) Rules, 2006](#)

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## **THE COMPANIES (CENTRAL GOVERNMENT'S) GENERAL RULES AND FORMS, (AMENDMENT), RULES 2011**

Central Government notified amendment to Companies (Central Government's) General Rules and Forms 1956, in respect of Annexure 'A', Form 61 pertaining to filling of application with Registrar of Companies pursuant to Section 166, 210, 394, 560, 621A of the Companies Act, 1956, with effect from 26<sup>th</sup> March, 2011.

In terms amendment to Form 61 in Annexure 'A', the serial number 6 shall be read as under:

- Compounding of offences
- Extension of period of Annual General Meeting by three months under Section 166(1)
- Extending the period of annual accounts up to eighteen months under Section 210(4)
- Declaring a defunct company under Section 560
- Scheme of arrangement, amalgamation
- Normalizing a dormant company
- Others

**Click here to view:** [26/03/2011](#) [G.S.R. - dated 26.03.2011 - Rules to amend the Companies \(Central Government's\) General Rules and Forms, 1956](#)

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## DELEGATION OF POWERS AND FUNCTIONS TO REGISTRARS OF COMPANIES ON SELECTIVE PROVISIONS

CLICK HERE TO VIEW: 17/03/2011 [G.S.R. - dated 17.03.2011 - Delegation of powers and functions to Registrars of Companies on selective provisions](#)

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## DELEGATION OF POWERS AND FUNCTIONS TO REGIONAL DIRECTORS ON SELECTIVE PROVISIONS

CLICK HERE TO VIEW : 17/03/2011 [G.S.R. - dated 17.03.2011 - Delegation of powers and functions to Regional Directors on selective provisions](#)

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## AMENDMENTS IN THE NOTIFICATION NUMBER, SRO DATED 7TH JANUARY, 1957

CLICK HERE TO VIEW : 17/03/2011 [S.O. - dated 17.03.2011 - Amendments in the notification number, SRO dated 7th January, 1957](#)

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## COMPANIES (NAME AVAILABILITY) RULES, 2011

In exercise of the power conferred by clause (a) of sub-section (1) of section 642 read with sections 20 and 21 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules:

1(i) These Rules may be called "Companies (Name Availability) Rules, 2011";

(ii) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. As per provisions contained in Section 20 of the Companies Act, 1956, no company is to be registered with undesirable name. A proposed name is considered to be undesirable if it is identical with or too nearly resembling with:

(i) Name of a company in existence; or

(ii) A registered trade-mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

3. After notification of these Rules, while applying for a name in the prescribed e-form-1A, using Digital Signature Certificate (DSC), the applicant shall be required to furnish a declaration to the effect that:

(i) he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., [www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21) for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved.

(ii) the proposed name(s) is/are not infringing the registered trademarks or a trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;

(iii) the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;

(iv) The proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity;

(v) he has gone through all the prescribed guidelines, given in these Rules, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;

(vi) he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.

4. Where, the proposed name is containing more than one word, there will be an option in the e-form 1A for certification by the practicing Chartered Accountants, Company Secretaries and Cost Accountants, who will certify that he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., [www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21) for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved and the search report is attached with the application form. The professional will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and also is in conformity with Companies (Name Availability) Rules, 2011 and Guidelines made therein.

5(i). Where e-form 1A has been certified by the professional in the manner stated at '4' above, the name will be made available by the system online to the applicant without backend processing by the Registrar of Companies (ROC). This facility is not available for applications for change of name of existing companies.



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(ii) Where a name has been made available online on the basis of certification of practicing professional in the manner stated above, if it is found later on that the name ought not to have been allowed under provisions of section 20 of the Companies Act read with these Rules, the professional shall also be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulations of respective professional Institutes.

(iii) Where e-form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

6. The name if made available, is liable to be withdrawn anytime before registration of the company, if it is found later on that the name ought not to have been allowed. However, ROC will pass an specific order giving reasons for withdrawal of name, with an opportunity to the applicant of being heard, before withdrawal of such name.

7. The name if made available to the applicant, shall be reserved for sixty days from the date of approval and further extension of thirty days with revalidation application and fees. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

8. Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.

9. In determining whether a proposed name is identical with another, the following shall be disregarded:

(i) The words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(ii) The words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(iii) The plural version of any of the words appearing in the name;

(iv) The type and case of letters, spacing between letters and punctuation marks;

(v) Joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;

(vi) The use of a different tense or number of the same word does not distinguish one name from another;

(vii) Using different phonetic spellings or spelling variations does not distinguish one name from another. For example, J.K. Industries limited is existing then J and K Industries or Jay Kay Industries or J n K Industries or J & K Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;

(viii) Misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;

(ix) The addition of an internet related designation, such as .COM, .NET, .EDU, .GOV, .ORG, .IN does not make a name distinguishable from another, even where (.) is written as 'dot';

(x) The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name such as New Bata Shoe Company, Nav Bharat Electronic etc. Similarly, if it is different from the name of the existing company only to the extent of adding the name of



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the place, the same shall not be allowed. For example, 'Unique Marbles Delhi Limited' can not be allowed if 'Unique Marbles Limited' is already existing;

Such names may be allowed only if no objection from the existing company by way of Board resolution is produced/ submitted;

(xi) Different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" should not be allowed;

(xii) If the proposed name is an exact Hindi translation of the name of an existing company in English especially an existing company with a reputation, e.g., Hindustan Steel Industries Ltd. will not be allowed if there exists a company with name 'Hindustan Ispat Udyog Limited';

## **10. Guidelines for availability of name**

In supersession of all the previous circulars and instructions regarding name availability, the applicants and Registrar of Companies are also advised to adhere following guidelines while applying or approving the proposed name:

(i) It is not necessary that the proposed name should be indicative of the main object. However, in case the proposed name is indicative of any activity, the same will be appropriately reflected in the main object clause of the Memorandum of Association;

(ii) If the Company's main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

(iv) Abbreviated name such as 'ABC limited' or '23K limited' cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited, Hindustan Machine Tools limited to HMT limited) after following the requirement of Section 21 of the Companies Act, 1956;

(v) If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court under section 559 of the Act. Moreover, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 560 of the Act, then the same shall not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority;

(vi) If the proposed names include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(vii) If the proposed name includes the word "State", the same shall be allowed only in case the company is a government company. Also, if the proposed name is containing only the name of a continent, country, state, city such as Asia



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limited, Germany Limited, Haryana Limited, Mysore Limited, the same shall not be allowed;

(viii) If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(ix) Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon;

(x) With a view to maintain uniformity, the following guidelines may be followed in the use of keywords, as part of name, while making available the proposed names under section 20 and 21 of the Companies Act, 1956:

S.No	Key Words	Required authorized capital (in Rs.)
1	Corporation, corp, corpn, corp.	25 crore
2	international, Globe, Global, World, Overseas, Universe, Universal, Continent, Continental, InterContinental, Asiatic, Asia, Asian being the first word of the name	5 crore
3	If any of the words at (2) above is used within the name (with or without brackets)	2 crore
4	Hindustan, India, Indo, Indian, Bharat, Bharatvarsh, Bhartiya or any other country's name being first word of the name	2 crore
5	If any of the words at (4) above is used within the name (with or without brackets)	25 lakh
6	Industries/ Udyog	5 crore
7	Enterprises, Products, Business, Manufacturing, Venture.	50 lakh

\* \* \* \* \*



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## **PROCESS OF INCORPORATION OF COMPANIES (FORM-1) AND ESTABLISHMENT OF PRINCIPAL PLACE OF BUSINESS IN INDIA BY FOREIGN COMPANIES (FORM-44) – PROCEDURE SIMPLIFIED [MCA/08.03.2011]**

General Circular No. 6/2011

F.No. 17/56/2011-CL-V  
Government of India  
Ministry of Corporate Affairs

<sup>th</sup>  
5 Floor, A Wing, Shastri Bhavan  
Dr. R.P. Road, New Delhi-110001

<sup>th</sup>  
Dated 8 March, 2011

To  
All Regional Directors  
All Registrar of Companies  
All Official Liquidators

Sub: Process of incorporation of Companies ( Form-1) and establishment of principal place of business in India by Foreign Companies ( Form-44) – Procedure simplified.

Sir,

I am directed to inform that Ministry has received various representations regarding time taken by the Registrar of Companies for registration of Form-1 and Form-44.

The Ministry has got the issue examined by Business Process Re-engineering Group under MCA-21 and in order to speed up and simplify the process of incorporation of Companies and establishment of principal place of business in India by Foreign Companies for reduction in time taken by Registrar of Companies, the below mentioned procedure have been recommended :

1. Only Form-1 shall be approved by the RoC Office. Form 18 and 32 shall be processed by the system online.
2. There shall be one more category, i.e., Incorporation Forms ( Form 1A, Form 37, 39, 44 and 68) which will have the highest priority for approval.
3. Average time taken for incorporation of company should be reduced to one (1) day only.
4. A Notification to notify minor changes in e-forms 18 and 32 to enable them to be taken on record through STP mode for aforesaid procedure is being issued separately.

Yours faithfully,  
( Seema Rath )  
Assistant Director (Inspection)  
Tele : 011-23387263

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## **PAYMENT OF MCA FEES THROUGH ELECTRONIC MODE**

No. HQ/9/2002-Computerization  
Government of India  
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan  
Dr. R.P. Road, New Delhi-110001<sup>th</sup>

Dated 9 March, 2011

### CIRCULAR

Sub: Payment of MCA fees –electronic mode-regarding

Ministry has reviewed the processes involved in delivery of important services to stakeholders, with a view to identify and improve the components causing delay in disposal of applications. Payment confirmation is found to be a major bottleneck in delivery of services in respect of offline payment made by physical challans .It was found that often there was a delay in confirmation of payments by physical challans, as banks have been given a reporting time of 'T'+3 days, as per payment procedure approved by C&AG,'T' being the transaction date. This leads to delay in creation of work item for disposal of an application/e-form, leading to inconvenience of stakeholders. On the other hand, it was found that wherever fees were paid online in the system, the work item was created faster and the approvals were speedier as banks are following ' T'+1 for reporting online payments.

2. In the interest of stakeholders, with a view to improving service delivery time, Ministry has decided to accept payments of value upto Rs.50,000, for MCA 21 services ,only in electronic mode w.e.f 27th March, 2011.

3. For the payments of value above Rs. 50,000, stakeholders would have the option to either make the payment in electronic mode, or paper challan. However such payments would also be made in electronic mode w.e.f .1st October'2011.

Yours faithfully,

( Nirupama Kotru)

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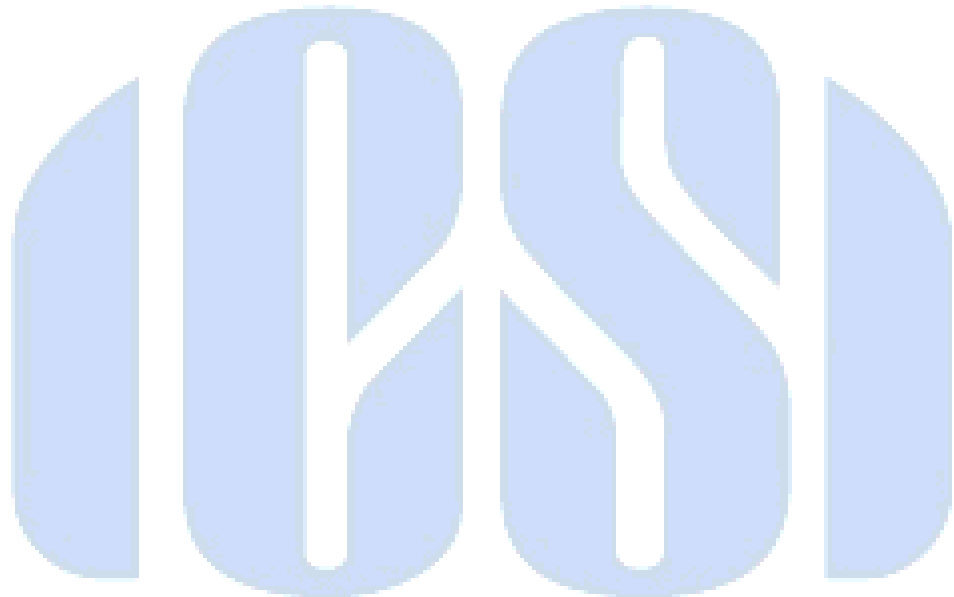


## **PAYMENT OF COMMISSION TO NON-WHOLE TIME DIRECTORS OF THE COMPANY UNDER SECTION 309(4)(b) OF THE COMPANIES ACT, 1956**

MCA, vide General Circular No. 4/2011 dated 4th March, 2011, has decided that a Company shall not require approval of the central government for making payment of remuneration by way of commission to its non-whole time directors in addition to the sitting fee if the total commission to be paid to all these non-whole time directors does not exceed 1% of the net profit of the company if it has whole time director(s) or 3% of the net profit of the company if it does not have a managing director or whole time director(s).

A copy of the General Circular No. 4/2011 dated 4th March, 2011 is attached herewith or you may visit the following link to get the Circular:-  
[http://www.mca.gov.in/Ministry/pdf/Circular\\_4-2011\\_4mar2011.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_4-2011_4mar2011.pdf)

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## MINISTRY OF CORPORATE AFFAIRS NOTIFIES SECTION 5,6,20,29, 30 & 31 OF COMPETITION ACT, 2002 WITH EFFECT FROM JUNE 01, 2011

March 08, 2011

Dear Professional Colleagues,

The Ministry of Corporate Affairs has notified long awaited Sections 5, 6, 20, 29, 30 & 31 of the Competition Act 2002 **with effect from June 01, 2011**

Section 5 deals with Combination (threshold limits).

Section 6 deals with Regulation of Combinations

Section 20 deals with Inquiry into Combination by Commission

Section 29 deals with procedure for investigation of combination

Section 30 deals with procedure in case of notice under Section 6(2)

Section 31 deals with orders of the commission on certain combinations

### Highlights of the notifications

- The notification exempts an enterprise, whose control, shares, voting rights or assets are being acquired has assets of the value of not more than Rs. 250 crores or turnover of not more than Rs. 750 crores, from the provisions of section 5 of the Competition Act 2002 for a period of five years.
- The notification exempts the 'Group' exercising less than fifty per cent of voting rights in other enterprise, from the provisions of section 5 of the Competition Act 2002 for a period of five years.
- The notification enhances the value of assets and the value of turnover, by fifty per cent for the purposes of section 5 of the Competition Act 2002 on the basis of the wholesale price index.

The notifications are available at the link

[http://www.mca.gov.in/Ministry/notification/pdf/Notification\\_4mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/Notification_4mar2011.pdf)

The draft Regulations are available at the link

<http://www.cci.gov.in/images/media/Regulations/DraftCombinationRegulation.pdf>

The notification of these provisions will open opportunities for Company Secretaries in Practice. The Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India and Competition Appellate Tribunal. Besides, there are a number of concepts, terms such as value of assets, turnover, determination of market, relevant market, geographic market which will require active professional involvement and advice.

Regards,

CS N K Jain  
Secretary & CEO

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## DIN PROCESS – SIMPLIFIED – REG.

General Circular No.5/2011  
F.No.2/1/2011 CL.V  
Government of India  
Ministry of Corporate Affairs,

Shastri Bhawan,  
5<sup>th</sup> Floor, 'A' Wing,  
Dr.Rajendra Prasad Road  
New Delhi.  
Dated : 04.03.2011

To  
All Regional Directors,  
All Registrars of Companies,  
All Official Liquidators.

**SUBJECT; DIN PROCESS – SIMPLIFIED – REG.**

Sir,

I am directed to inform that the Ministry's has re-examined the process of allotment of Directors Identification Number (DIN) to be obtained u/s 266B of the Companies Act, 1956. The present process is cumbersome and time consuming. Representations have been received in the Ministry that the documents required to be submitted should be simple to prove the existence/residence of a person, who intend to become a director of a company.

The Ministry has constituted a Group to examine the business process re-engineering under MCA-21. In order to speed up and simplify the process to obtain a DIN, the below mentioned procedure have been recommended.

1. Application for DIN will be made on **eForm** ; **No physical submission of documents shall be accepted** and for this purpose Scanned documents along with verification by the applicant will be attached with the eForm. **Only online fee payment** will be allowed i.e. No challan payment
2. **The application can also be submitted online by the applicant himself using his DSC.**
3. DIN 1 eForm can be **digitally signed by the professional who shall also confirm that he has verified the particulars of the Applicant given in the application.**



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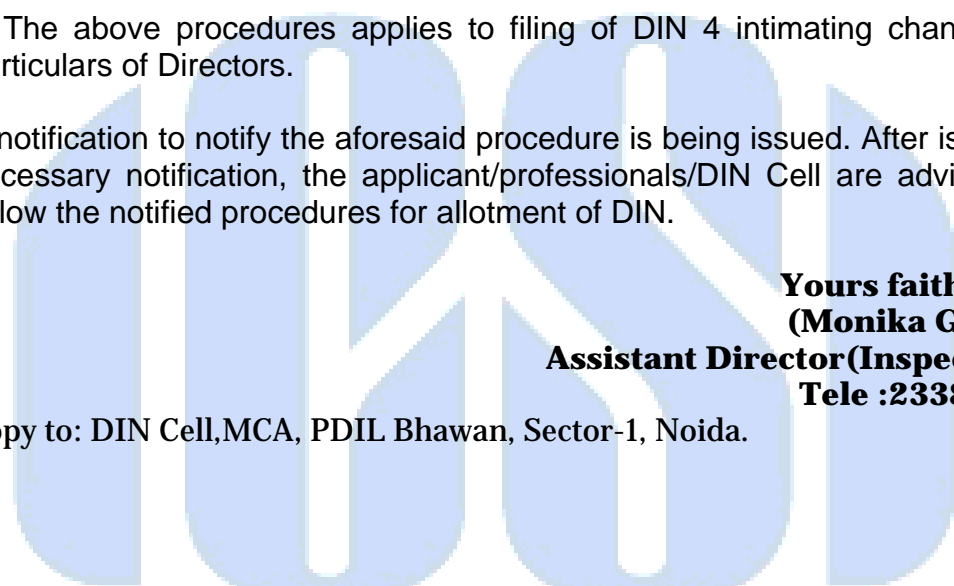


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4. Where the DIN 1 is verified by the professional, the DIN will be approved by the system immediately online.
5. In other cases the DIN cell will examine the application and same shall be disposed of within one or two days.
6. Companies (Directors Identification Number) Rules, 2006 are being amended on the above lines.
7. Penal action against the applicant and professional certifying the DIN application in case of false information / certification as per provisions of section 628 of the Act will be taken in addition to action for professional misconduct and revocation of DIN, allotted on false information
8. The above procedures is expected to enable allotment of DIN on the **same day**.
9. The above procedures applies to filing of DIN 4 intimating changes in particulars of Directors.

A notification to notify the aforesaid procedure is being issued. After issue of necessary notification, the applicant/professionals/DIN Cell are advised to follow the notified procedures for allotment of DIN.



**Yours faithfully,  
(Monika Gupta)  
Assistant Director (Inspection)  
Tele :23387263**

Copy to: DIN Cell, MCA, PDIL Bhawan, Sector-1, Noida.

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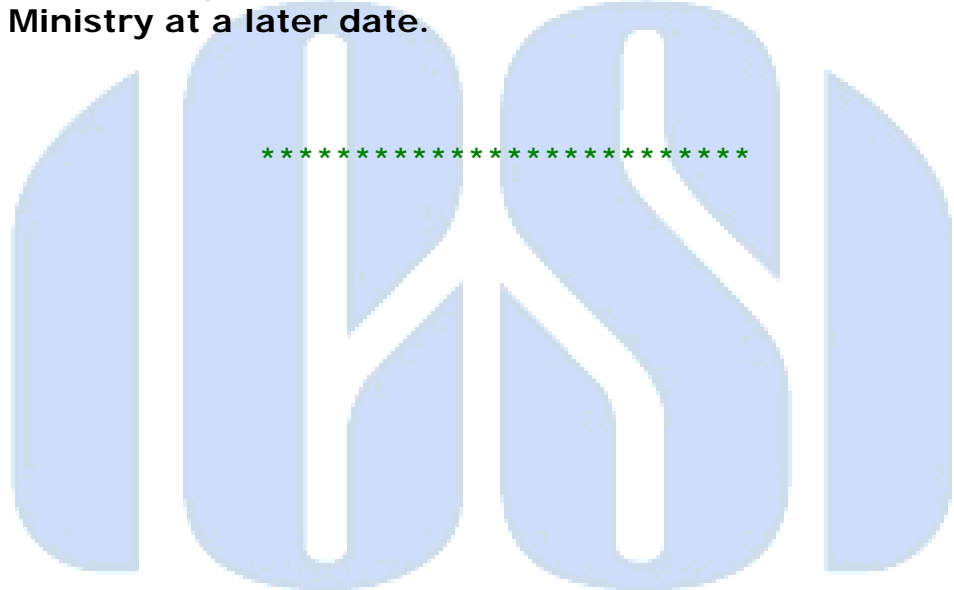
## INDIAN ACCOUNTING STANDARDS CONVERGED WITH IFRS

The Ministry of Corporate Affairs has notified convergence of 35 Indian Accounting Standards with International Financial Reporting Standards (henceforth called IND AS) on February 25, 2011.

These are: IND ASs 1, 2, 7, 8, 10, 11, 12, 16, 17, 18, 19, 20, 21, 23, 24, 27, 28, 29, 31, 32, 33, 34, 36, 37, 38, 39, 40, 101, 102, 103, 104, 105, 106, 107 and 108. (available on the MCA website at the link [http://www.mca.gov.in/Ministry/accounting\\_standards.htm](http://www.mca.gov.in/Ministry/accounting_standards.htm))

The date of implementation of the IND AS will be notified by the Ministry at a later date.

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**MCA GENERAL CIRCULAR No: 3/2011 DATED: 21<sup>ST</sup> FEBRUARY ON CLARIFICATION IN RESPECT OF CIRCULAR NO. 2/2011 DATED 8<sup>TH</sup> FEBRUARY, 2011 REGARDING DIRECTION UNDER SECTION 212(8) OF THE COMPANIES ACT, 1956**

**General Circular No: 3/2011**

No: 5/12/2007-CL-III  
Government of India  
Ministry of Corporate Affairs

<sup>th</sup>  
5 floor, 'A' Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi - 110001

<sup>st</sup>  
**Dated: 21 February, 2011**

To  
All Regional Directors  
All Registrar of Companies

**Subject: Clarification in respect of Circular No. 2/2011 dated 8<sup>th</sup> February, 2011 regarding direction under Section 212(8) of the Companies Act, 1956.**

Sir,

It is clarified that this Ministry Circular No. 2/2011 dated 8<sup>th</sup> February, 2011 shall be effective in respect of balance sheet and profit and loss accounts prepared regarding the financial year ending on or after the 31<sup>st</sup> March, 2011.

Yours faithfully

(Jaikant Singh)  
Director

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## General Circular No: 2 /2011

No: 51/12/2007-CL-III  
Government of India  
Ministry of Corporate Affairs

5<sup>th</sup> floor, `A' Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi-110 001.  
Dated: 8<sup>th</sup> February, 2011

To

All Regional Directors  
All Registrar of Companies

**Subject: Direction under Section 212(8) of the Companies Act, 1956.**

Sir,

It has been noticed that a large number of companies are approaching the Ministry for exemption under Section 212(8) of the Companies Act, 1956. The matter was examined in the context of the globalizing Indian economy, the increased number of subsidiaries, and the introduction of accounting standards on consolidated financial statements. It has been decided to grant a general exemption provided certain conditions are fulfilled.

The Central Government hereby directs that provisions of Section 212 shall not apply in relation to subsidiaries of those companies which fulfil the following conditions:-

(i) The Board of Directors of the Company has by resolution given consent for not attaching the balance sheet of the subsidiary concerned;

(ii) The company shall present in the annual report, the consolidated financial statements of holding company and all subsidiaries duly audited by its statutory auditors;

(iii) The consolidated financial statement shall be prepared in strict compliance with applicable Accounting Standards and, where applicable, Listing Agreement as prescribed by the Security and Exchange Board of India;

(iv) The company shall disclose in the consolidated balance sheet the following information in aggregate for each subsidiary including subsidiaries of subsidiaries:-  
(a) capital (b) reserves (c) total assets (d) total liabilities (e) details of investment (except in case of investment in the subsidiaries) (f) turnover (g) profit before taxation (h) provision for taxation (i) profit after taxation (j) proposed dividend;

(v) The holding company shall undertake in its annual report that annual accounts of the subsidiary companies and the related detailed information shall be made available to shareholders of the holding and subsidiary companies seeking such information at



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any point of time. The annual accounts of the subsidiary companies shall also be kept for inspection by any shareholders in the head office of the holding company and of the subsidiary companies concerned and a note to the above effect will be included in the annual report of the holding company. The holding company shall furnish a hard copy of details of accounts of subsidiaries to any shareholder on demand;

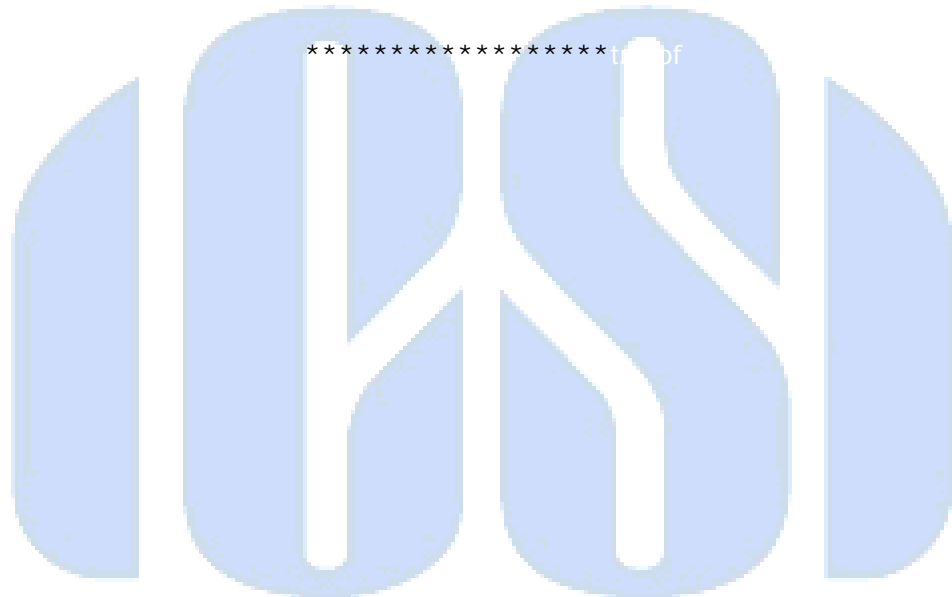
(vi) The holding as well as subsidiary companies in question shall regularly file such data to the various regulatory and Government authorities as may be required by them;

(vii) The company shall give Indian rupee equivalent of the figures given in foreign currency appearing in the accounts of the subsidiary companies along with exchange rate as on closing day of the financial year;

Yours faithfully

(Jaikant Singh)

Director





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March 30, 2011

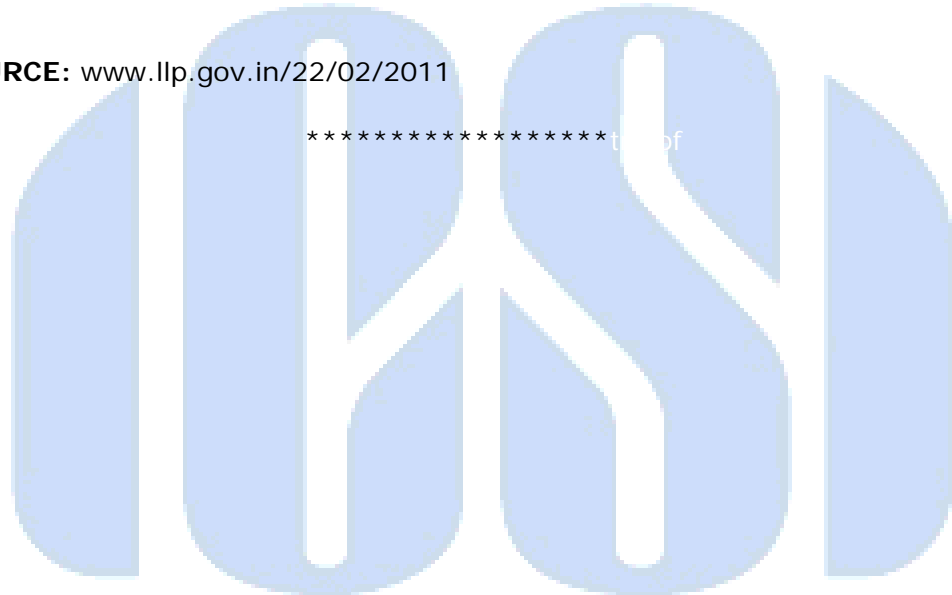
## NEW FEATURE INCLUDED IN E-FORMS ON THE LLP PORTAL.

The new feature of downloadable e-forms has been made available on the LLP Portal. Users may now download the e-forms required to be filed and upload the same once filled at their end.

Users are requested to download [Acrobat PDF reader ver. 9.0](#) and above, so as to continue filing forms in the LLP System. Users are also advised to go through the instructions kit for each form before filing any e-form. Any user, who wishes to do any modifications in the e-form once signed before uploading the same in the LLP Portal, is requested to clear the signatures and then make the required modifications and later re-sign the e-form before upload. Users may save the uploaded e-form at their end for future needs like resubmission etc. The same e-form needs to be modified in case of resubmission requested by the LLP Office, for any missing information or change in any information in the uploaded e-form. For more information please contact LLP Helpdesk on 66336666 or mail us at [llpsupport-mca@nic.in](mailto:llpsupport-mca@nic.in)

SOURCE: [www.llp.gov.in/22/02/2011](http://www.llp.gov.in/22/02/2011)

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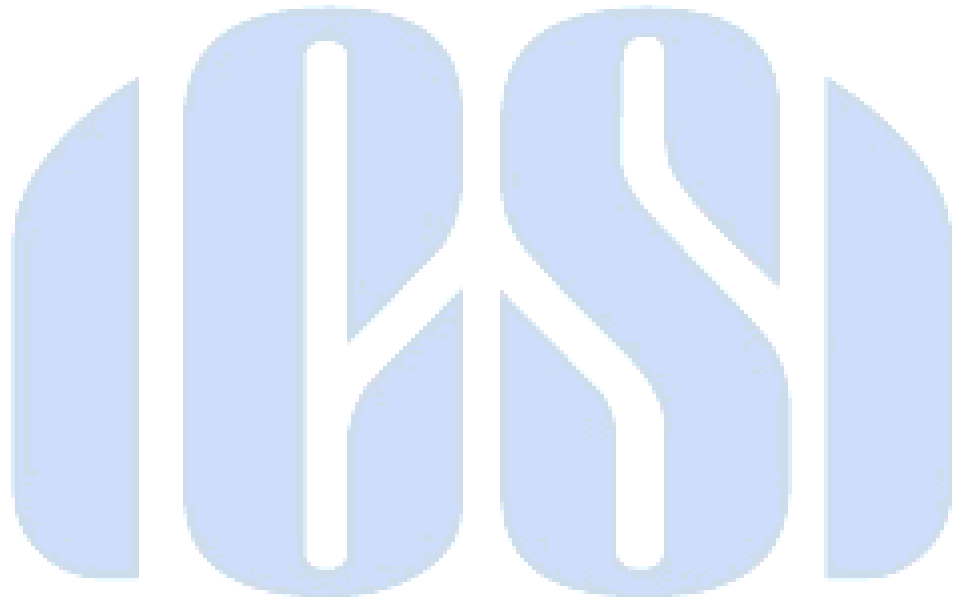
**LLP SHALL MANDATORILY FILE FORM 3 AND FORM 4 WITHIN 30 DAYS OF INCORPORATION & FORM 7 SHALL BE DIGITALLY SIGNED BY APPLICANT'S OWN DSC.**

1) Every LLP shall mandatorily file Form 3 and Form 4 within 30 days of incorporation failing which Rs.100/- per day will be charged as additional fees on each Form.

2) Form 7 shall be digitally signed by applicant's own DSC. The DSC of other partners and professionals should not be used while applying Form 7.

SOURCE: [www.llp.gov.in](http://www.llp.gov.in) /22/02/2011

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## **MCA NOTIFICATIONS ON GENERAL EXEMPTIONS U/S 211 AND APPLICABILITY OF SCH. XIII IN CASE OF UNLISTED COMPANIES**

The Ministry of Corporate Affairs has issued notifications on. "General Exemptions under Section 211" and "Applicability of Schedule XIII in regard to Managerial Remuneration in case of unlisted companies". The Ministry has also given directions under Section 212 of the Companies Act, 1956 vide its general circular no. 1/2011. The gist of the same is produced below for your information and reference:

### **(i) General Exemption under Section 211 of the Companies Act, 1956**

Section 211 of the Companies Act, 1956 requires that the balance sheet and profit and loss account of a company shall be in the form set out in Part I of Schedule VI or in such other form as may be approved by the Central Government either generally or in any particular case. So far, these exemptions were being given on a case-by-case basis with certain conditions. The MCA has decided to give general exemption specifying the categories of companies that will be exempted from certain disclosures. Details under PIB Report dated 8<sup>th</sup> February, 2011 available at the link <http://pib.nic.in/newsite/erelease.aspx?relid=69672>

### **(ii) Directions under Section 212 of the Companies Act, 1956**

Section 212 of the Companies Act, 1956 requires holding companies to attach with their balance sheet a copy of the balance sheet, profit and loss account etc. of each of its subsidiaries. The Ministry has been granting permission not to attach the account of subsidiaries on case-by-case basis on the basis of certain conditions which are intended to protect the interests of investors. The Ministry has vide its general circular no. 1/2011 decided that the permission may be granted on a general basis wherever the Board of Directors of the holding company gives its consent and the conditions prescribed by the Ministry are complied with.. Details are available at the link [http://mca.gov.in/Ministry/pdf/Circular\\_08feb2011.pdf](http://mca.gov.in/Ministry/pdf/Circular_08feb2011.pdf)

### **(iii) Schedule XIII of the Companies Act, 1956 being amended – Unlisted companies shall not require Government approval for managerial remuneration where they have no profits**

Schedule XIII of the Companies Act is being amended to provide that unlisted companies (which are not subsidiaries of listed companies) shall not require Government approval for managerial remuneration in cases where they have no profits/inadequate



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profits, provided they meet the other conditions stipulated in the Schedule. Details available at the link <http://pib.nic.in/newsite/erelease.aspx?relid=69674>

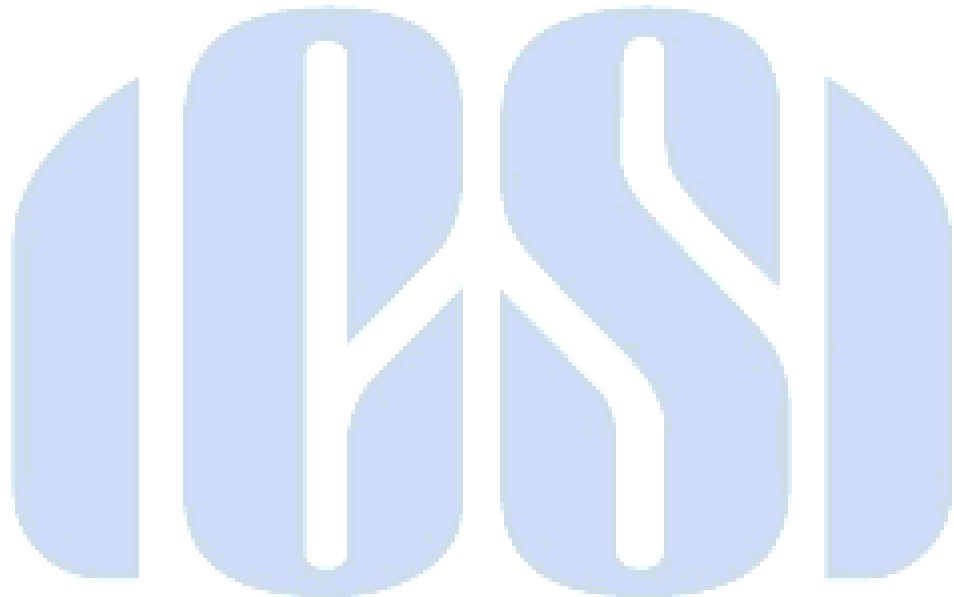


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## **EXEMPTION UNDER SECTION 211 OF COMPANIES ACT 1956 [MCA NOTIFICATION/DATE: 08/02, 2011]**

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB SECTION (ii) of dated the 8<sup>th</sup> February, 2011]

**Government of India  
Ministry of Corporate Affairs  
NOTIFICATION**

New Delhi; the 8<sup>th</sup> February, 2011

**S.O. 300 (E).** – In exercise of the powers conferred by sub-section (3) of section 211 of the Companies Act, 1956 (1 of 1956), the Central Government, being of the opinion that it is necessary to grant exemption in the public interest, hereby exempts Public Financial Institutions as specified under section 4A of the Companies Act, 1956 from disclosing Investments as required under paragraph (1) of Note (1) of Part-I of Schedule VI in their balance sheet subject to fulfillment of the following conditions, namely:-

- (i) the Public Financial Institutions shall make the complete disclosures about investments in the balance sheet in respect of the following, namely: -
- (a)immovable property;
  - (b)capital of Partnership firms;
  - (c)all unquoted investments and;
  - (d)investments in subsidiary companies.
- (ii) the Public Financial Institutions shall disclose the total value of quoted investments in each of the following respective categories, namely:-
- (a)Government and trusts securities;
  - (b)shares;
  - (c)debentures;
  - (d)bonds; and
  - (e)other securities.



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(iii) in each of the above categories referred to in sub-paragraphs (i) and (ii), investments where value exceeds two percent of total value in each category or one crore rupees, whichever is lower, shall be disclosed fully provided that where disclosures do not result in disclosure of at least fifty percent of total value of investment in a particular category, additional disclosure of investments in descending order of value shall be made so that specific disclosures account for at least fifty percent of the total value of investments in that category;

(iv) the Public Financial Institutions shall also give an undertaking to the effect that as and when any of the shareholders ask for specific particulars the same shall be provided;

(v) all unquoted investments shall be separately shown;

(vi) the company shall undertake to file with any other authorities, whenever necessary, all the relevant particulars as may be required by the Government or other regulatory bodies;

(vii) the Investments in subsidiary companies or in any company such that it becomes a subsidiary, shall be fully disclosed.

2. This notification shall be applicable in respect of balance sheet and profit and loss accounts prepared in respect of the financial year ending on or after the 31<sup>st</sup> March, 2011.

[F. No. 51/12/2007-CL.III]  
(Dr. T.V. Somanathan)  
Joint Secretary

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## EASY EXIT SCHEME, 2011

February 7, 2011

Dear Professional Colleagues,

The Ministry of Corporate Affairs had introduced the Easy Exit Scheme, 2011 under Section 560 of the Companies Act, 1956 to give an opportunity to defunct companies, for getting their names struck off the Register of Companies. The scheme was originally in operation from 1<sup>st</sup> January, 2011 to 31<sup>st</sup> January, 2011

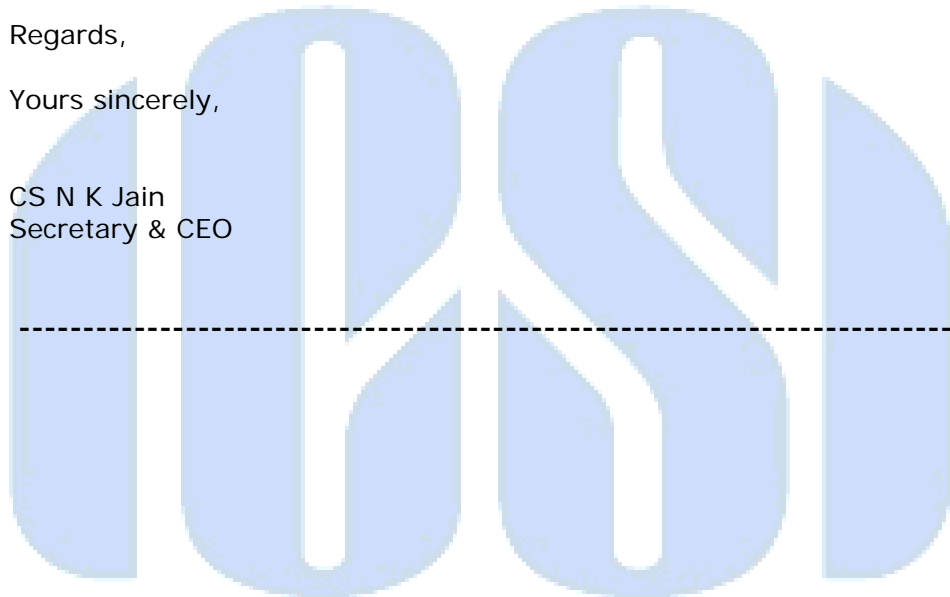
The MCA has vide its General Circular No. 1/2011 dated 3<sup>rd</sup> Feb, 2011 extended the Scheme for a further period of three months i.e. upto 30<sup>th</sup> April, 2011.

Copy of the General Circular No. 1/2011 dated 03.02.2011 is appended below for your ready reference. The same may be downloaded from the MCA website at the link [http://www.mca.gov.in/Ministry/pdf/Circular\\_EES2011\\_03feb2011.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_EES2011_03feb2011.pdf)

Regards,

Yours sincerely,

CS N K Jain  
Secretary & CEO





# CS Update

March 30, 2011



**Walk, ride a bike, or use public transportation whenever possible.**



**Keep vehicles well maintained. Under-inflated tires and dirty air-intake filters can significantly reduce gas mileage.**



**General Circular No. 1/2011**

**F. No. 2/7/2010-CL V**  
**Government of India**  
**Ministry of Corporate Affairs**

<sup>th</sup>  
5 Floor, 'A' Wing, Shastri Bhavan,  
Dr. R.P. Road , New Delhi  
<sub>rd</sub>

Dated the 3 Feb, 2011

To  
All Regional Director,  
All Registrar of Companies.

**Subject: Easy Exit Scheme , 2011**

Sir,

In continuation to this Ministry's earlier circular no. 6/2010 dated 03.12.2010 on the subject cited above, it has been decided to extend <sup>th</sup> the Scheme for another three months i.e. upto 30 April, 2011.

2. All the terms of circular no. 6/2010 dated 03.12.2010 will remain the same.

Yours faithfully,  
  
(Monika Gupta)  
Assistant Director

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# CS Update

March 30, 2011



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# SEBI UPDATE





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## **ADDENDUM TO CIRCULAR NO. CIR/ISD/1/2011 DATED MARCH 23, 2011**

### **CIRCULAR**

Cir/ISD/2/2011

March 24, 2011

To

All Stock Exchanges / All Depositories/ All SEBI Registered Market Intermediaries

Dear Sir/Madam,

**Sub: Addendum to Circular no. Cir/ISD/1/2011 dated March 23, 2011**

This has reference to circular no. Cir/ISD/1/2011 dated March 23, 2011 issued regarding unauthenticated news circulated by SEBI Registered Market Intermediaries through various modes of communication.

1. The last paragraph in point 3 of said circular shall read as follows: -

- Employees should be directed that any market related news received by them either in their official mail/personal mail/blog or in any other manner, should be forwarded only after the same has been seen and approved by the concerned Intermediary's Compliance Officer. If an employee fails to do so, he/she shall be deemed to have violated the various provisions contained in SEBI Act/Rules/Regulations etc. and shall be liable for action. The Compliance Officer shall also be held liable for breach of duty in this regard.

2. All other provisions of the circular No. Cir/ISD/1/2011 dated March 23, 2011 shall remain unchanged.

3. The Stock Exchanges are advised to:

a. bring the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites.

b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another to achieve uniformity in approach.

c. communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

4. The Depositories are advised to: -

a. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/necessary ;

b. bring the provisions of this circular to the notice of their DPs; and

c. disseminate the same on the website.



# CS Update

March 30, 2011



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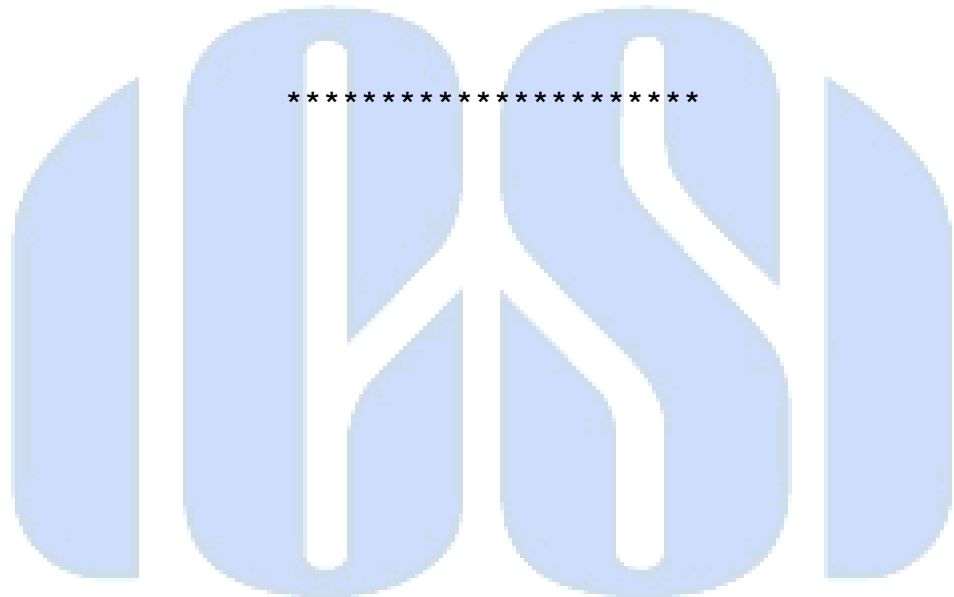


5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

6. A copy of this circular is available at the web page [www.sebi.gov.in](http://www.sebi.gov.in), under the category 'Legal Framework'.

Yours faithfully,

**AVARJEET SINGH**  
**DEPUTY GENERAL MANAGER**  
TEL : 022 26449262  
Fax : 022 26449023  
EMAIL – [avarjeets@sebi.gov.in](mailto:avarjeets@sebi.gov.in)





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## UNAUTHENTICATED NEWS CIRCULATED BY SEBI REGISTERED MARKET INTERMEDIARIES THROUGH VARIOUS MODES OF COMMUNICATION

### CIRCULAR

Cir/ ISD/1/2011

March 23, 2011

To

All Stock Exchanges / All Depositories/ All SEBI Registered Market Intermediaries

Dear Sir/Madam,

**Sub: Unauthenticated news circulated by SEBI Registered Market Intermediaries through various modes of communication**

1. It has been observed by SEBI that unauthenticated news related to various scrips are circulated in blogs/chat forums/e-mail etc. by employees of Broking Houses/Other Intermediaries without adequate caution as mandated in the Code of Conduct for Stock Brokers and respective Regulations of various intermediaries registered with SEBI.

2. Further, in various instances, it has been observed that the Intermediaries do not have proper internal controls and do not ensure that proper checks and balances are in place to govern the conduct of their employees. Due to lack of proper internal controls and poor training, employees of such intermediaries are sometimes not aware of the damage which can be caused by circulation of unauthenticated news or rumours. It is a well established fact that market rumours can do considerable damage to the normal functioning and behaviour of the market and distort the price discovery mechanisms.

3. In view of the above facts, SEBI Registered Market Intermediaries are directed that:

- Proper internal code of conduct and controls should be put in place.
- Employees/temporary staff/voluntary workers etc. employed/working in the Offices of market intermediaries do not encourage or circulate rumours or unverified information obtained from client, industry, any trade or any other sources without verification.
- Access to Blogs/Chat forums/Messenger sites etc. should either be restricted under supervision or access should not be allowed.
- Logs for any usage of such Blogs/Chat forums/Messenger sites (called by any nomenclature) shall be treated as records and the same should be maintained as specified by the respective Regulations which govern the concerned intermediary.
- Employees should be directed that any market related news received by them either in their official mail/personal mail/blog or in any other manner, should be forwarded only after the same has been seen and approved by the concerned Intermediary's Compliance Officer. If an employee fails to do so, he/she shall be



# CS Update

March 30, 2011



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deemed to have violated the various provisions contained in SEBI Act/Rules/Regulations etc. and shall be liable for actions.

4. The Stock Exchanges are advised to:

a. bring the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites.

b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another to achieve uniformity in approach.

c. communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

5. The Depositories are advised to: -

a. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately, as may be applicable/necessary ;

b. bring the provisions of this circular to the notice of their DPs; and

c. disseminate the same on the website.

6. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

7. The circular shall come into force from the date of the circular.

8. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in), under the category 'Legal Framework'.

Yours faithfully,

**AVARJEET SINGH**  
**DEPUTY GENERAL MANAGER**  
**TEL : 022 26449262**  
**Fax : 022 26449023**  
**EMAIL – [avarjeets@sebi.gov.in](mailto:avarjeets@sebi.gov.in)**



भारतीय प्रतिभूति और विनिमय बोर्ड  
Securities and Exchange Board of India

संपर्क प्रभाग, सेबी भवन, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051  
Communications Division, SEBI Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051  
दूरभाष / Tel: +91-22-26449000 ईमेल / email: press@sebi.gov.in वेबसाइट / website: www.sebi.gov.in

PR No.46/2011

## ADVICE TO INTERMEDIARIES

Securities and Exchange Board of India (SEBI) is a regulatory body established by an Act of Parliament to protect the interests of investors in the securities market, to promote the development of, to regulate the securities market and for matters connected therewith or incidental thereto.

The following [Circular](#) has been issued by SEBI in the interest of the Securities market:

SEBI has observed that unauthenticated news related to various scrips are circulated in blogs/chat forums/e-mail etc. by employees of Broking Houses/Other Intermediaries without adequate caution as mandated in the Code of Conduct for Stock Brokers. In various instances, it has been observed that the Intermediaries do not have proper internal controls and do not ensure that proper checks and balances are in place to govern the conduct of their employees. Further, due to lack of proper internal controls and poor training, employees of such intermediaries are sometimes not aware of the damage which can be caused by circulation of unauthenticated news or rumours. It is a well established fact that market rumours can do considerable damage to the normal functioning and behaviour of the market and distort the price discovery mechanisms.

In view of the above facts, it is directed to the market intermediaries that:

- Proper internal code of conduct and controls should be put in place.
- Employees/temporary staff/voluntary workers etc. employed/working in the Offices of market intermediaries do not encourage or circulate rumours or unverified information obtained from client, industry, any trade or any other sources without verification.

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# CS Update

March 30, 2011



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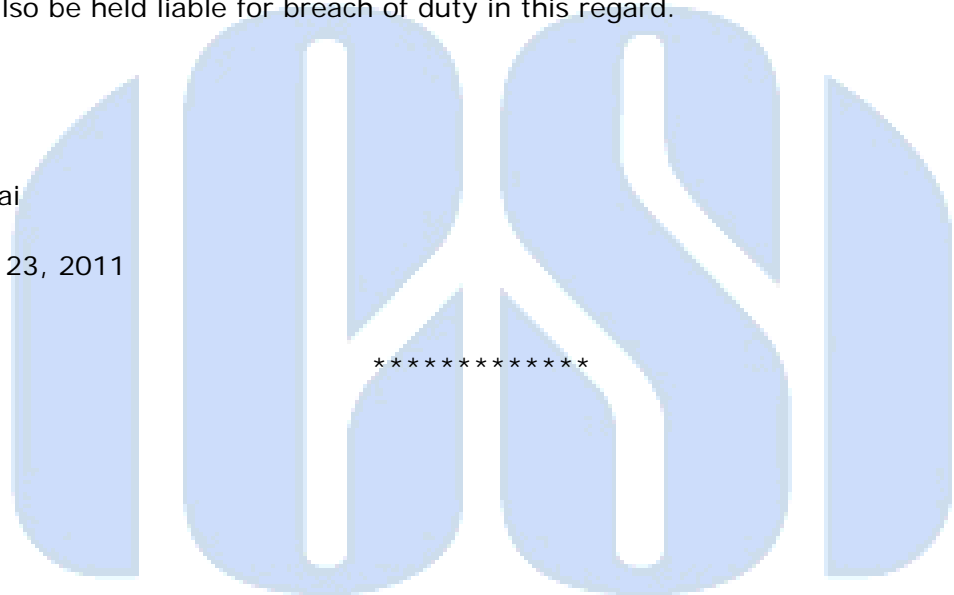
- Access to Blogs/Chat forums/Messenger sites etc. should either be restricted under supervision or access should not be allowed.

- Logs for any usage of such Blogs/Chat forums/Messenger sites (called by any nomenclature) shall be treated as records and the same should be maintained as specified by the respective Regulations which govern the concerned intermediary.

- Employees should be directed that any market related news received by them either in their official mail/personal mail/blog or in any other manner, should be forwarded only after the same has been seen and approved by the concerned Intermediary's Compliance Officer. If an employee fails to do so, he/she shall be deemed to have violated the various provisions contained in SEBI Act/Rules/Regulations etc. and shall be liable for action. The Compliance Officer shall also be held liable for breach of duty in this regard.

Mumbai

March 23, 2011



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# CS Update

March 30, 2011



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