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## CS Update

April 29, 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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# CS Update

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# FROM FRESH

# ICESI





## 12th NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

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

The Council of the Institute has decided to hold the 12<sup>th</sup> National Conference of Practising Company Secretaries 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 members 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.

CLICK HERE TO VIEW BROCHURE: [12th National Conference of Practising Company Secretary\\_](#)

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Since the ICSI has a formal tie-up with eJurix, you can now connect to either ICSI-KP or eJurix and seamlessly access contents on both! eJurix coverage of Corporate Law is the most respected today, with a large number of major Corporates as subscribers. eJurix is available on web & thru Smart Phone, so you can access what you want - even when you're on the move!

ICSI-KP website: <http://knowledge.icsi.edu>  
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 \* Only Corporate Law module is available for non ICSI members at Rs 10,000/- P.A  
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 \* Subscription amounts are for 1 yr

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## FREQUENTLY ASKED QUESTIONS ON ICSI-USE MOU

### 1. What is United Stock Exchange of India?

United Stock Exchange of India Limited (USE) is India's newest stock exchange and has been promoted by 21 Indian public sector banks, private banks and corporate houses. USE is the trading platform for Currency Futures now.

### 2. Who can trade on currency futures?

Any Resident Indian or Company can become a member of USE and trade in the currency futures market. At present, Non Resident Indians (NRIs) and Foreign Institutional Investors (FIIs) are not permitted to trade in the futures market in India.

### 3. Why has ICSI partnered with USE?

ICSI-USE understand and realize the high growth potential of the Indian financial markets and has agreed to collaborate in variety of educative initiatives such as:

1. Holding and organizing seminars on financial markets and corporate governance to empower the users.
2. Creating infrastructure of knowledge based technical studies on financial markets.
3. Creating awareness about the complex financial instruments and using derivatives for effective hedging keeping accounting standards in perspective.
4. Conduct various kinds of certification programmes and literature on financial markets and corporate governance.
5. Hosting events such as simulation exercises (mock trading on exchanges), seminars, and training in financial markets to empower ICSI members and general investing public in rightfully analyzing the financial markets.
6. Conducting research and other related activities in financial markets and impact of corporate laws and Secretarial standards on financial markets.
7. Imparting and conducting special training and education programmes in financial markets.
8. Organizing short term courses on various asset classes, currency, interest rates, commodity, debt, mutual funds, and derivatives.
9. Organizing panel discussions, webcasting and presentation of experts on various aspects of financial markets and using electronic media for imparting knowledge.
10. Collaborating for joint certification of ICSI professionals on topics of professional interest.

### 4. What is the distinctive benefit offered by USE to ICSI Members?

Membership of United Stock Exchange of India is available free of cost to all ICSI Members for the first three months from the signing of this MOU. The MOU was signed on March 07, 2011 at New Delhi.

### 5. What are the different types of membership available?



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There are 2 types of memberships available with USE:

**TRADING MEMBERSHIP:** Trading Members have the privilege of trading on one's own account as well as on the accounts of their clients but do not have the facility to clear and settle debts.

**CLEARING MEMBERSHIP:** Clearing Members are entitled to clear and settle trades for all trading members through the clearing corporation of USE – ICCL (a wholly owned subsidiary of Bombay Stock exchange with fully automated post trade services).

## 6. Who can take membership of the exchange?

Any Proprietor, Partnership or Corporate Firm fulfilling the eligibility requirements laid down by SEBI can take membership of the exchange. Following are the requirements as per SEBI guidelines.

- For Trading Membership, the member should possess a liquid net worth of 1 Crore Rupees, while for a Clearing Membership the member requires liquid net worth of 5 Crore Rupees.
- The Designated Directors should have an experience of minimum 2 years in the capital market.
- Minimum 2 NISM (series – 1) certificates

## 7. How can I attain NISM Certification?

There is NISM online exam for the currency segment. The member can login and register online on the website of Bombay Stock Exchange and take a slot as per his/her convenience. The link for the same is <http://www.bseindia.com/training/nismregistration.asp>

## 8. How do ICSI members register themselves as trading members of USE? (Procedural Requirements)

The procedure for becoming a Trading Member with the exchange basically involves 2 steps i.e. filling the Application form and the Commencement of Business (COB) Form.

As a first step the applicant would be required to fill in and submit the Application Forms to the Exchange. These forms can be downloaded from USE website, the link for which is <http://www.useindia.com/downloads.php>.

These forms would be submitted to SEBI, who would scrutinise the forms and then issue its SEBI Certificate. After this the applicant would be required to submit the Commencement of Business Forms (COB) available on USE website.

Upon Completion of this formality the applicant becomes a full fledged member.

## 9. What activities can I undertake on the platform?

The member can use this platform for meeting his need for all three functions i.e. for hedging, speculating and arbitraging. Spread contracts are also available on the USE platform.

## 10. Would I have to undertake any hidden costs?



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At the time of inception to trade, Trading member is required to pay a security deposit of 1 Lakh Rupees to the exchange which is fully refundable upon surrender of the membership.

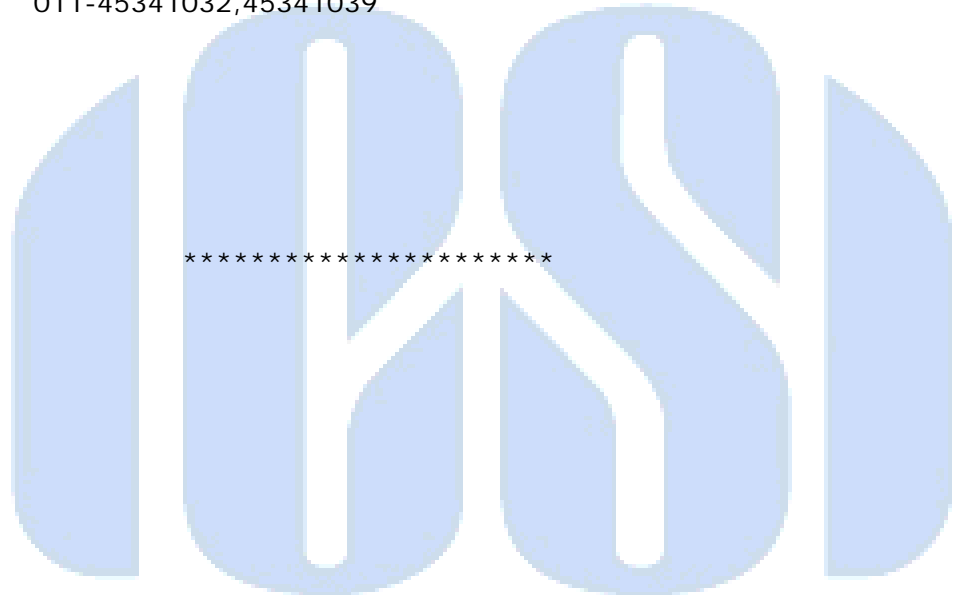
Similarly a Clearing member would have to pay security deposit of 50 Lakh Rupees which constitutes of 25 Lakhs as cash and other 25 Lakhs as non cash component. This is a non interest bearing deposit.

The software and connectivity would be provided by the exchange free of cost. Members having BSE connectivity would also be able to use it for USE software for free. As of now, there are no transaction charges on the exchange.

**11. For further Information and queries please contact:**

Directorate of Academics & Professional Development  
Institute of Company Secretaries of India  
Email: [sonia.baijal@icsi.edu](mailto:sonia.baijal@icsi.edu)  
Tel: 011-45341032,45341039

Membership Department  
United Stock Exchange of India Ltd.  
Email: [membership@useindia.com](mailto:membership@useindia.com)  
Tel: 022- 42444902





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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 Guidelines for Compulsory Attendance of Professional



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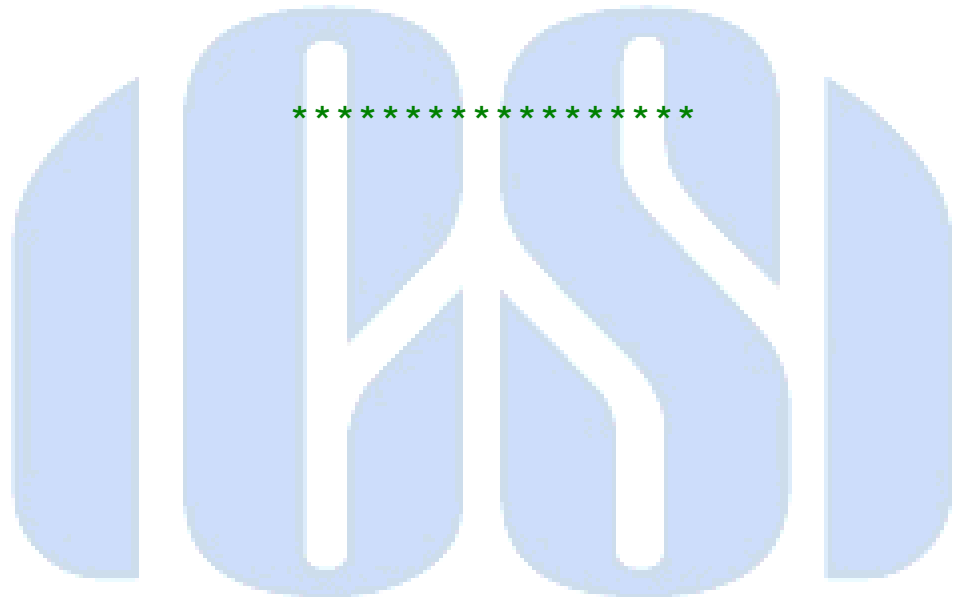
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	<p>the member has already completed the mandatory PCH upto December 31, 2010 and continued to attend Professional Development Programmes during January – March, 2011</p>	<p>Development Programmes by the Members do not provide for carry forward of 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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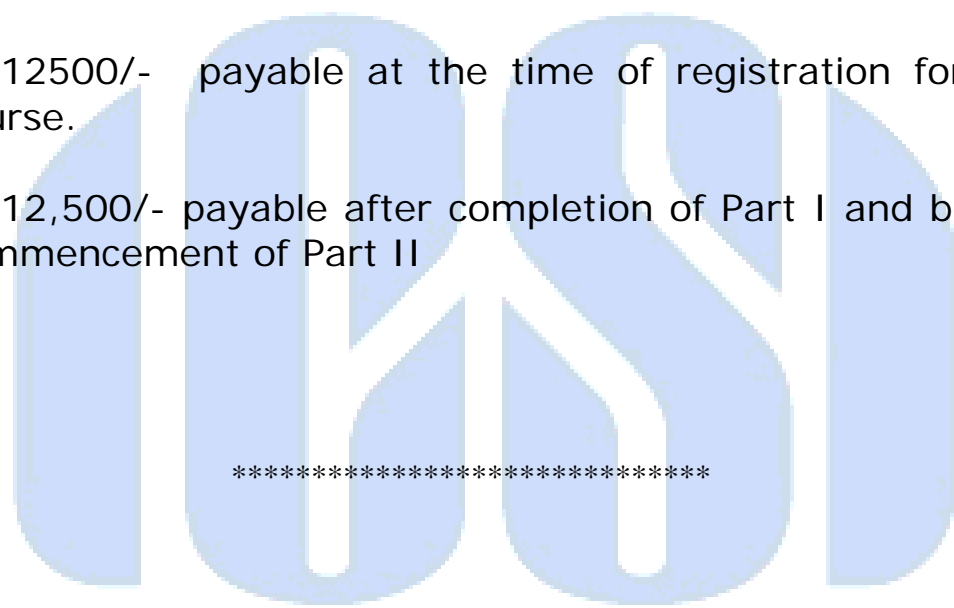
## **PMQ COURSE IN CORPORATE GOVERNANCE**

### **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

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# MCA UPDATE

## Latest

GREEN INITIATIVES IN THE CORPORATE GOVERNANCE



# CS Update

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## Circular No. 17/2011

No 17/95/2011 CL-V  
Government of India  
Ministry of Corporate Affairs

5<sup>th</sup> floor, 'A' Wing, Shastri Bhawan,  
Dr. Rajendra Prasad Road, New Delhi  
Dated: 21.04.2011

All the Regional Directors,  
All the Registrar of Companies/ Official Liquidators

**Subject: - Green Initiatives in the Corporate Governance -- Clarification regarding service of documents by e-mode instead of Under Posting Certificate (UPC).**

Sir,

The Ministry of Corporate Affairs has taken a "Green Initiative in the Corporate Governance" by allowing paperless compliances by the Companies after considering sections 2, 4, 5, and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act through electronic mode.

Section 53 of the Companies Act, 1956 provides service of documents under 'Certificate of posting' as one of the accepted mode of service. Whereas the Department of posts has recently discontinued the postal facility under 'Certificate of posting' vide their letter dated 23.02.2011. The Information Technology Act, 2000 also permits service of documents etc., in electronic mode.

Keeping in view of above, it is hereby clarified that a company would have complied with Section 53 of the Companies Act, if the service of document has been made through electronic mode provided the company has obtained e-mail addresses of its members for sending the notice/documents through e-mail by giving an advance opportunity to every shareholders to register their e-mail address and changes therein from time to time with the company.

In cases where any member has not registered his e-mail address with the company, the service of document etc will be effected by other modes of service as provided under section 53 of the Companies Act, 1956.

Yours faithfully,

  
(Kamna Sharma)  
Assistant Director

Copy to: All concerned.



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## AMALGAMATION OF GOVERNMENT COMPANIES.

### GENERAL CIRCULAR NO. 16/2011

F.No. 51/16/2011/CL-III  
Government of India  
Ministry of Corporate Affairs

5<sup>th</sup> Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi  
Dated the 20<sup>th</sup> April, 2011

**All Regional Directors  
All Registrar of Companies  
All Official Liquidators**

**SUBJECT: AMALGAMATION OF GOVERNMENT COMPANIES.**

**Simplified Procedure for amalgamation of Government Companies U/s 396 of the Companies Act, 1956.**

Sir,

The Ministry of Corporate Affairs have been dealing with the amalgamation of Government Companies in the Public Interest under section 396 of the Companies Act, 1956 by following the procedures prescribed under Companies (Court) Rules, 1959 which are applicable to amalgamation under Sections 391-394 of the Companies Act, 1956. Without prejudice to the generality of Section 396, it has now been decided that, in appropriate cases, simpler procedures shall be adopted for the amalgamation of Government Companies under section 396 of the Companies Act, 1956 as given below :-

- 1) (a) Every Central Government Company which is applying to the Central Government for amalgamation with any other Government Company or Companies under the simplified procedure prescribed in this circular, shall obtain approval of the Cabinet i.e. Union Council of Ministers to the effect that the proposed amalgamation is essential in the 'public interest'.
- (b) In the case of State government companies, the approval of the State Council of Ministers would be required.
- (c) Where both central and state government companies are involved, approval of both State Cabinet(s) and Central Cabinet shall be necessary.

(2) (i) A Government Company may, by a resolution passed at its general meeting decide to amalgamate with any other Government Company, which agrees to such transfer by a resolution passed at its general meeting;

(ii) Any two or more Government Companies may, by a resolution passed at any general meetings of its Members, decide to amalgamate and with a new Government Company.



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(3) Every resolution of a Government Company under this section shall be passed at its general meeting by members holding 100% of the voting power and such resolution shall contain all particulars of the assets and liabilities of amalgamating government companies.

(4) Before passing a resolution under this section, the Government Company shall give notice thereof of not less than 30 days in writing together with a copy of the proposed resolution to all the Members and creditors.

(5) A resolution passed by a Government Company under this section shall not take effect until (i) the assent of all creditors has been obtained, or (ii) the assent of 90% of the creditors by value has been received and the company certifies that there is no objection from any other creditor.

(6) The resolutions passed by the transferor and transferee companies along with written confirmation of the Cabinet decision referred to in para (i) shall then be submitted to the Central Government which shall, if it is satisfied that all the requirements of Section 396 and of this circular, have been fulfilled, order by notification in the Gazette that the said amalgamation shall take effect.

(7) The order of the Central Government shall provide:-

a) for the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company

b) that the amalgamation of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, may be continued or commenced by, or against, the concerned resulting company, or transferee company, as the case may be.

c) for such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out

(8) The Cabinet decision referred to in para (1) above may precede or follow the passing of the resolution referred to in para (2).

(9) When an order has been passed by the Central Government under this section, it shall be a sufficient conveyance to vest the assets and liabilities in the transferee.

(10) Where one government company is amalgamated with another government company, under these provisions, the registration of the first-mentioned Company i.e. transferor company, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.

(11) Where two or more Government Companies are amalgamated into a new Government Company in accordance with these provisions and the Government Company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate body.

(12) The amalgamation of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations, and any legal proceedings that might have been continued or commenced by or against any



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April 29, 2011



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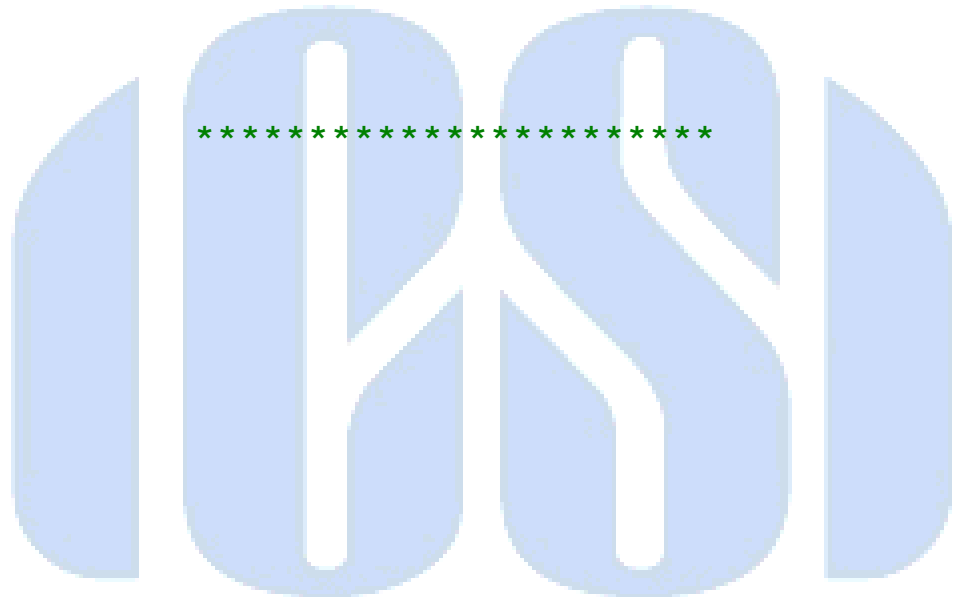


erstwhile company before the amalgamation, may be continued or commenced by, or against, the concerned resulting company, or transferee company, as the case may be.

(13) The Registrar shall strike off the names of every Government Company deemed to have been dissolved under sub-sections (10) to (11).

(14) Nothing in this Circular shall prevent government companies from applying for amalgamation before the Central Government under Sections 391-394 of the Companies Act.

Sd/  
(Rita Dogra)  
Under Secretary to the Govt. of India





## APPOINTMENT OF COST AUDITOR BY COMPANIES

General Circular No. 15/2011

52/5/CAB-2011  
Government of India  
Ministry of Corporate Affairs  
**Cost Audit Branch**

\*\*\*\*\*

'B-1' Wing, 2<sup>nd</sup> Floor,  
Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi – 110 003

Dated the April 11, 2011

To,

The President,  
Institute of Cost and Works Accountants of India,  
12, Sudder Street,  
Kolkata – 700 016

**Subject: Appointment of Cost Auditor by Companies**

Sir,

Ministry has reviewed the existing procedure followed by the companies for seeking prior approval of the Central Government for appointment of cost auditor under section 233B (2) of the Companies Act, 1956. In supersession of any earlier order/circular issued in this regard, the revised procedure to be followed by the companies and cost auditor shall be as under:

- (a) The company required to get its cost records audited under section 233B (1) of the Companies Act, 1956 shall appoint a cost auditor who is a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act and includes a firm of cost accountants.
- (b) The Audit Committee of the Board shall be the first point of reference regarding the appointment of cost auditors.



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- (c) The Audit Committee shall ensure that the cost auditor is free from any disqualifications as specified under section 233B (5) read with section 224 and sub-section (3) or sub-section (4) of section 226 of the Companies Act, 1956.
- (d) While a cost auditor shall have prime responsibility to ensure that he does not violate the limits specified under section 224 (1-B) of the Companies Act 1956, the Audit Committee shall also be responsible for such compliance by the cost auditor.
- (e) The Audit Committee shall obtain a certificate from the cost auditor certifying his/its independence and arm's length relationship with the company.
- (f) The company shall e-file its application with the Central Government on [www.mca.gov.in](http://www.mca.gov.in) portal, in the prescribed form 23C within ninety days from the date of commencement of each financial year, along with the prescribed fee as per the Companies (Fees on Applications) Rules, 1999 as amended from time-to-time and other documents as per existing practice i.e. (i) certified copy of the Board Resolution proposing appointment of the cost auditor; and (ii) copy of the certificate obtained from the cost auditor regarding compliance of section 224 (1-B) of the Companies Act, 1956.
- (g) On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within thirty days from the date of filing such application.
- (h) If within thirty days from the date of filing such application, the Central Government directs the company to re-submit the said application with such additional information or explanation, as may be specified in that direction, the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.
- (i) After expiry of thirty days, as the case may be, the company shall issue formal letter of appointment to the cost auditor, as approved by the Board.
- (j) Within thirty days of receipt of formal letter of appointment from the company, the cost auditor shall inform the Central Government in the



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- prescribed form, alongwith a copy of such appointment. An e-form for the same is being developed and will be notified shortly.
- (k) The company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost audit report by the cost auditor, in its Annual Report for each relevant financial year.
- (l) In those companies where constitution of an Audit Committee of the Board is not required by law, the words "Audit Committee" shall stand substituted by the words "Board of Directors".
2. If a company contravenes any provisions of this circular, the company and every officer thereof who is in default, including the persons referred to in sub-section (6) of section 209 of the Act, shall be punishable as provided under sub-section (2) of section 642 read with sub-sections (5) and (7) of section 209 and sub-section (11) of section 233B of Companies Act, 1956.
3. If default is made by the cost auditor in complying with the aforesaid provisions, he shall be punishable with fine, which may extend to five thousand rupees.
4. The modified procedure contained in this circular shall be effective from the financial year commencing on or after the 1<sup>st</sup> day of April, 2011.
5. The Institute is requested to bring this to the general information of all Members in practice, and of the corporate sector.

Yours faithfully,

A handwritten signature in black ink.

(B.B.Goyal)

Adviser (Cost)

\*\*\*\*\*



## ALLOTMENT OF DIRECTOR IDENTIFICATION NUMBER (DIN) UNDER COMPANIES ACT, 1956



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General Circular No.11/2011

F.No.2/1/2011 CL.V  
Government of India  
Ministry of Corporate Affairs  
CL V Section

5<sup>th</sup> Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi  
Dated 07.04.2011

All Regional Directors,  
All Registrar of Companies.

Sub : Allotment of Director Identification Number (DIN) under Companies Act, 1956

Sir,


The Ministry of Corporate Affairs has already simplified the process for obtaining DIN online, if the DIN-1 eform has been digitally signed by the practicing Chartered Accountant, Company Secretary or Cost Accountant, verifying the particulars of the applicants given in the application. However, in other cases, where the DIN form is digitally signed by the applicant only, the applications are being disposed off with in one or two days after examination by the Central Government.

2. As another step towards simplification in allotment of DIN, the Ministry is considering to allot all DIN applications online. To examine the DIN-4 eform through the system, it has been decided that following fields in the DIN-1 eform will be mandatory : --

- (i) Name of Applicant
- (ii) Father's name of the Applicant
- (iii) Date of Birth
- (iv) Income Tax Permanent Account Number (PAN) in case of all Indian Nationals.
- (v) Passport in case of all Foreign Nationals.

3. At present, the PAN of the applicant is not a mandatory field in DIN eform-1. In order to examine DIN-4 eform through the system and to avoid duplicate DIN, it has been decided that all existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN, are required to furnish their PAN by filing DIN-4 eform by 31<sup>st</sup> May, 2011.

Yours faithfully,

  
(J.N. Tikku)  
Joint Director

Copy to : --

1. ICAI/ICWAI/ICSI/All Chamber of Commerce with a request to give wide publicity to their members.
2. DIN Cell to issue message through e-mail and SMS to all existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN, are required to furnish their PAN by filing DIN-4 eform by 31<sup>st</sup> May, 2011.



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## **CERTIFICATION OF E-FORMS UNDER THE COMPANIES ACT, 1956 BY THE PRACTICING PROFESSIONALS**

**No 17/102/2011 CL-V Circular 14/2011**

**Government of India**

**Ministry of Corporate Affairs**

**5th floor, 'A' Wing, Shastri Bhawan,**

**Dr. Rajendra Prasad Road, New Delhi**

**Dated: 08.04.2011**

**To**

**All the Regional Directors,**

**All the Registrar of Companies/ Official Liquidators**

**Subject:- Certification of e-forms under the Companies Act, 1956 by the Practicing professionals**

Ministry of Corporate Affairs has been steadily progressing towards total electronic filing and approval regime. Objective is to do away with human intervention in MCA approvals to the maximum extent possible.

2. For this purpose, Ministry of Corporate Affairs has entrusted practicing professionals registered as Members of the professional bodies namely, ICAI, ICSI & ICWAI with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode. Professionals are now to be responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry.

3. However, to ensure that the data integrity is maintained at all times, there will be checking of such submissions to guard against fraudulent filing. In addition to the penal actions against the companies and their officers in default for furnishing incorrect or false information in the documents as provided under the Companies Act, 1956, action would also be taken on receipt of any complaint, anonymous or otherwise, against such professionals in the following manner: -

a) Alleged wrong submissions: In such cases, quick enquiry will be conducted by the concerned RD who will be assessing prima facie, cases of wrong doing by the professionals. Concerned professionals



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will be given time for furnishing explanation before conveying to a cancellation.

b) This report will be submitted to e-Governance Cell of MCA. The Cell will inform in the concerned Professional Institute to initiate an enquiry and complete the same within a month's time.

c) Simultaneously, the concerned professional shall be debarred and shall not be allowed to enter to submit any document on MCA Portal. This debarment will be for a period of 30 days or till the final enquiry report is received from the respective Professional Institute.

d) MCA will take a final decision after considering the report so received.

**Yours faithfully,  
(Sanjay Shorey)  
Dy. Director**

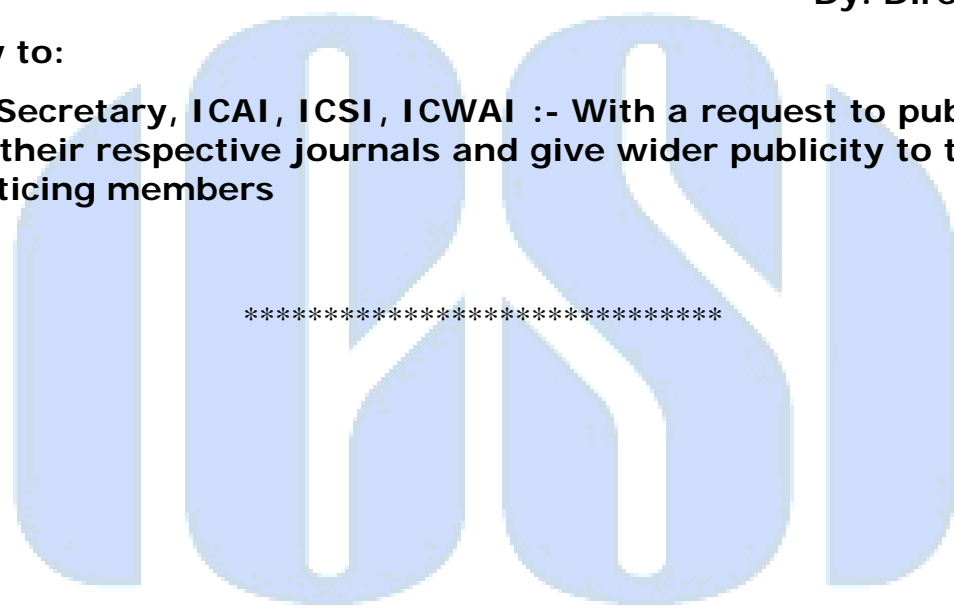
**Copy to:**

**The Secretary, ICAI, ICSI, ICWAI :- With a request to publish it in their respective journals and give wider publicity to their practicing members**



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## **INTERPRETATION OF THE WORD "PARTNERSHIP" FOR THE PURPOSE OF CHARTERED ACCOUNTANTS ACT, 1949, COST AND WORKS ACCOUNTANTS ACT, 1959 AND COMPANY SECRETARIES ACT, 1980.**

General Circular No. 10/2011

No. 17/71/2011 CL V  
Government of India  
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Marg, New Delhi 110001  
Dated : 04.04.2011

### **C I R C U L A R**

**Subject : Interpretation of the word "Partnership" for the purpose of Chartered Accountants Act, 1949, Cost and Works Accountants Act, 1959 and Company Secretaries Act, 1980.**

The Acts governing the three professional Institutes define in Section 2 members who are deemed to be in practice. In all the three Acts, there is a provision for a member to be in practice when he is in partnership with certain others. In the case of Chartered Accountants and Cost & Works Accountants, such persons must be member of the same Institute, while in the case of Company Secretaries, it is provided that the partnership could also be with members of such other recognised professions as may be prescribed.

2. At the time of enactment of the three Acts governing the professional Institutes, only one form of partnership existed in India, namely Partnerships under Indian Partnership Act, 1932. Subsequently, Parliament has enacted the Limited Liability Partnerships Act, 2008. Though Limited Liability Partnerships are bodies corporate under Section 3(i) of the LLP Act, the fact that LLPs are basically partnerships may be seen from the definition in Section 2(i) (n) :

*" Limited Liability Partnerships means a partnership formed and registered under this Act.*

*Section 2(i)(q) defines a partner as "any person who becomes a partner in the limited liability partnership in accordance with the Limited Liability Partnership Agreement"*



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It is thus clear that a Limited Liability Partnership is also a partnership and its members are also partners.

3. The matter of permitting member of ICAI, ICWAI and ICSI was been examined in this Ministry. Acts governing these professionals were passed at a time when limited liability partnership did not exist. It is also clear from the definitions in the Limited Liability Partnership Act that such entities are also partnerships and their members are also partners. In the context of Section 2 of the Acts governing the professional Institutes, this interpretation is also not repugnant to the context. Accordingly, it is clarified that the words "partnership" wherever occurring in the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 shall mutatis mutandis be construed as including those Limited Liability Partnerships where all the other partners are natural persons(individuals). The word "partner" shall also be construed accordingly. This clarification shall apply only to these three Acts and not to any other enactment where the word "partnership" occurs.

4. This issues with the approval of Competent Authority.

Yours faithfully,

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

To  
All Regional Directors  
All Registrar of Companies  
All Official Liquidators

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April 29, 2011



## CLARIFICATION REGARDING EASY EXIT SCHEME (EES)

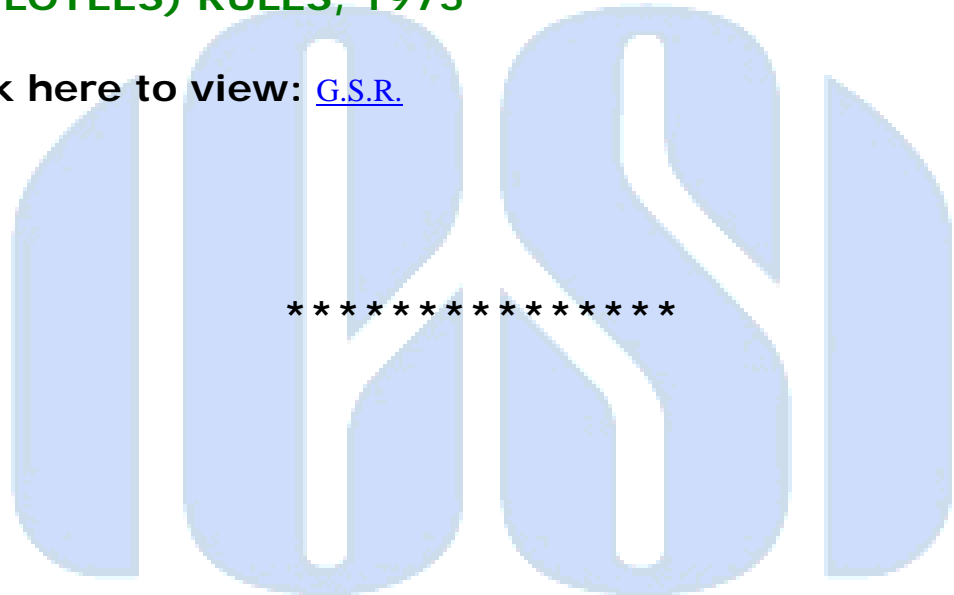
Click here to view: [General Circular No:12/2011](#)

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## AMENDMENT TO COMPANIES (PARTICULARS OF EMPLOYEES) RULES, 1975

Click here to view: [G.S.R.](#)

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## **COMPANIES (AMENDMENT) REGULATIONS, 2011 - AMENDMENT IN REGULATION 2(d)[REGIONAL DIRECTOR]**

**NOTIFICATION [F.NO.5/18/2005-C.L.V], DATED 6-4-2011**

In exercise of the Powers conferred by sub-sections (1), (2), (5) and (8) of section 25 and sub-section (2) of section 609 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following regulations further to amend the Companies Regulations, 1956, namely :

1. (1) These regulations may be called the Companies (Amendment) Regulations, 2011

(2) They shall come into force on the date of their publication in the official Gazette

2. In the Companies Regulations, 1956, in regulation 2, for clause (d), the following clause shall be substituted, namely:-

"(d) " Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director for the respective regions as under:-

(i) Regional Director - North Region Directorate Headquarter at Noida (Gautam Budh Nagar)

States of Jammu and Kashmir, Punjab, Himachal Pradesh, Haryana, National Capital Territory of Delhi, Uttar Pradesh, Uttarakhand and Union Territory of Chandigarh.

(ii) Regional Director - Southern Region Directorate Headquarter at Chennai

States of Andhra Pradesh, Karnataka, Tamil Nadu, Kerala and Union Territory of Lakshadweep, Union Territory of Andaman and Nicobar Islands and Puducherry.

(iii) Regional Director - Eastern Region Directorate Headquarter at Kolkata

States of Bihar, Jharkhand, Orissa, West Bengal.

(iv) Regional Director - Western Region Directorate Headquarter at Mumbai

States of Maharashtra, Goa and Union Territory of Daman and Diu.

(v) Regional Director - North Western Region Directorate Headquarter at Ahmedabad

States of Gujarat, Rajasthan, Madhya Pradesh, Chhattisgarh and Union Territory of Dadra and Nagar Haveli

(vi) Regional Director - North Eastern Region Directorate Headquarter at Guwahati



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State's of Meghalaya, Assam, Arunachal Pradesh, Nagaland, Mizoram, Manipur and Tripura.

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## **DIRECTOR'S RELATIVES (OFFICE OR PLACE OF PROFIT) AMENDMENT RULES, 2011 - AMENDMENT IN RULES 3 AND 7**

**NOTIFICATION [F.NO. 17/75/2011-C.L.V], DATED 6-4-2011**

In exercise of the powers conferred by clause (b) of sub-section (1) of section 642, read with sub-section (1B) of section 314 of the Companies Act, 1956, the Central Government hereby makes the following rules to amend the Director's Relatives (Office or Place of Profit) Rules, 2003, namely: -

1. (1) These rules may be called Director's Relatives (Office or Place of Profit) Amendment Rules, 2011.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Director's Relatives (Office or Place of Profit) Rules, 2003, (hereinafter referred to as the said rules), in rule 3, for the figures "50,000", the figures "2,50,000" shall be substituted.
3. In the said rules, for the figures "50,000", the figures "2,50,000" shall be substituted.
4. In the said rules, for rule 7, the following rule shall be substituted, namely:—  
The selection and appointment of a relative of a director holding office or place of profit in the company shall be approved by adopting the same procedure applicable to non-relatives :

**Provided** that, in the case of listed public companies, the selection of director for holding place of office or profit in the company shall have to be also approved by a Selection Committee.

*Explanation.-* For the purpose of this sub-rule, the expression "Selection Committee" means a committee, the majority of which shall consist of independent directors and an expert in the respective field from outside the company:

**Provided** that in case of unlisted companies, independent directors are not necessary but outside experts should be there in the Selection Committee:

**Provided further** that in the case of private companies, independent directors and outside experts are not necessary.



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## FILING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT IN EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL) MODE.

General Circular No. 09/2011

17/70/2011 –CL.V  
Government of India  
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi  
Dated the 31.03.2011

To

All Regional Directors  
All Registrar of Companies

**Subject: Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language( XBRL) mode.**

It has been decided by the Ministry of Corporate Affairs to mandate certain class of companies to file balance sheets and profit and loss account for the year 2010-11 onwards by using XBRL taxonomy. The Financial Statements required to be filed in XBRL format would be based upon the Taxonomy on XBRL developed for the existing Schedule VI, as per the existing, (non converged) Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006. The said Taxonomy is being hosted on the website of the Ministry at [www.mca.gov.in](http://www.mca.gov.in) shortly. The **Frequently Asked Questions** ( FAQs ) about XBRL have been framed by the Ministry and they are being annexed as Annexure I with this circular for the information and easy understanding of the stakeholders.

### Coverage in Phase I

2. The following class of companies have to file the Financial Statements in XBRL Form only from the year 2010-2011 :-

(i) All companies listed in India and their subsidiaries, including overseas subsidiaries;

(ii) All companies having a paid up capital of Rs. 5 Crore and above or a Turnover of Rs 100 crore or above .

### Additional Fee Exemption

3. All companies falling in Phase -I are permitted to file upto 30-09-2011 without any additional filing fee.



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## Training Requirement

4. Stakeholders desirous to have training on the XBRL or on taxonomy related issues, may contact the persons as mentioned in Annexure II.

(J.N. Tikku)

Joint Director  
Tel: 011-23381295

**Annexure I**

## Frequently Asked Questions

### 1. What is XBRL?

XBRL is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. XBRL stands for eXtensible Business Reporting Language. It is already being put to practical use in a number of countries and implementations of XBRL are growing rapidly around the world.

### 2. Who developed XBRL?

XBRL is an open, royalty-free software specification developed through a process of collaboration between accountants and technologists from all over the world. Together, they formed XBRL International which is now made up of over 650 members, which includes global companies, accounting, technology, government and financial services bodies. XBRL is and will remain an open specification based on XML that is being incorporated into many accounting and analytical software tools and applications.

### 3. What are the advantages of XBRL?

XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision making. XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis, aided by software which can validate and process XBRL information. XBRL is a flexible language, which is intended to support all current aspects of reporting in different countries and industries. Its extensible nature means that it can be adjusted to meet particular business requirements, even at the individual organization level.

### 4. Who can benefit from using XBRL?

All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information. Because XBRL is extensible and flexible, it can be adapted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data.

### 5. What is the future of XBRL?



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XBRL is set to become the standard way of recording, storing and transmitting business financial information. It is capable of use throughout the world, whatever the language of the country concerned, for a wide variety of business purposes. It will deliver major cost savings and gains in efficiency, improving processes in companies, governments and other organisations.

## 6. Does XBRL benefit the comparability of financial statements?

XBRL benefits comparability by helping to identify data which is genuinely alike and distinguishing information which is not comparable. Computers can process this information and populate both pre defined and customised reports.

## 7. Does XBRL cause a change in accounting standards?

No. XBRL is simply a language for information. It must accurately reflect data reported under different standards – it does not change them.

## 8. What are the benefits to a company from putting its financial statements into XBRL?

XBRL increases the usability of financial statement information. The need to re-key financial data for analytical and other purposes can be eliminated. By presenting its statements in XBRL, a company can benefit investors and other stakeholders and enhance its profile. It will also meet the requirements of regulators, lenders and others consumers of financial information, who are increasingly demanding reporting in XBRL. This will improve business relations and lead to a range of benefits.

With full adoption of XBRL, companies can automate data collection. For example, data from different company divisions with different accounting systems can be assembled quickly, cheaply and efficiently. Once data is gathered in XBRL, different types of reports using varying subsets of the data can be produced with minimum effort. A company finance division, for example, could quickly and reliably generate internal management reports, financial statements for publication, tax and other regulatory filings, as well as credit reports for lenders. Not only can data handling be automated, removing time-consuming, error-prone processes, but the data can be checked by software for accuracy.

## 9. How does XBRL work?

XBRL makes the data readable, with the help of two documents – Taxonomy and instance document. Taxonomy defines the elements and their relationships based on the regulatory requirements. Using the taxonomy prescribed by the regulators, companies need to map their reports, and generate a valid XBRL instance document. The process of mapping means matching the concepts as reported by the company to the corresponding element in the taxonomy. In addition to assigning XBRL tag from taxonomy, information like unit of measurement, period of data, scale of reporting etc., needs to be included in the instance document.

## 10. How do companies create statements in XBRL?

There are a number of ways to create financial statements in XBRL:

XBRL-aware accounting software products are becoming available which will support the export of data in XBRL form. These tools allow users to map charts of accounts and other structures to XBRL tags.



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Statements can be mapped into XBRL using XBRL software tools designed for this purpose

Data from accounting databases can be extracted in XBRL format. It is not strictly necessary for an accounting software vendor to use XBRL; third party products can achieve the transformation of the data to XBRL.

Applications can transform data in particular formats into XBRL. The route which an individual company may take will depend on its requirements and the accounting software and systems it currently uses, among other factors.

## 11. Is India a member of XBRL International?

India is now an established jurisdiction of XBRL International. A separate company, under section 25 has been created, to manage the operations of XBRL India. The main objectives of XBRL India are

- To create awareness about XBRL in India
- To develop and maintain Indian Taxonomies
- To help companies, adopt and implement XBRL.

For more information, visit [www.xbrl.org/in](http://www.xbrl.org/in)

## 12. Which taxonomies developed for Indian reporting requirements? Where can I find the taxonomies?

Taxonomies for Indian companies are developed based on the requirements of

- Schedule VI of Companies Act,
- Accounting Standards, issued by ICAI
- SEBI Listing requirements.

Taxonomies for Manufacturing and service sector (referred as Commercial and Industrial, or C&I) and Banking sector, is acknowledged by XBRL International. These taxonomies are available at <http://www.xbrl.org/in/>

## 13. Where can I find more information about XBRL?

Please visit [www.xbrl.org](http://www.xbrl.org) . Also Ministry of Corporate Affairs would be shortly developing its webpage on XBRL with list of contact persons for training purposes.

## 14. What are XBRL Documents?

An XBRL document comprises the taxonomy and the instance document. Taxonomy contains description and classification of business & financial terms, while the instance document is made up of the actual facts and figures. Taxonomy and Instance document together make up the XBRL documents.

## 15. What is Taxonomy?

Taxonomy can be referred as an electronic dictionary of the reporting concepts. Taxonomy consists of all the data definitions, the basic XBRL properties and the interrelationships amongst the concepts. It includes terms such as net income, EPS,



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cash, etc. Each term has specific attributes that help define it, including label and definition and potentially references. Taxonomies may represent hundreds or even thousands of individual business reporting concepts, mathematical and definitional relationships among them, along with text labels in multiple languages, references to authoritative literature, and information about how to display each concept to a user.

## 16. What is meant by extending taxonomy?

Taxonomy is extended to accommodate items/relationship specific to the owner of the information. Taxonomy extension therefore can be

- Modification in the existing relationships
- Addition of new elements in the taxonomy
- Combination both a & b

## 17. Are Taxonomies based on any standards?

Yes, taxonomies are based on the regulatory requirements and standards which are to be followed by the companies. Accordingly, depending on the requirements of every country, there can be country-specific taxonomies.

## 18. What is an Instance document?

An XBRL instance document is a business report in an electronic format created according to the rules of XBRL. It contains facts that are defined by the elements in the taxonomy it refers to, together with their values and an explanation of the context in which they are placed. XBRL Instances contain the reported data with their values and "contexts". Instance document must be linked to at least one taxonomy, which defines the contexts, labels or references.

Thus, in order to concluded the usage and explain the XBRL technology which leads to more information exchanges that can be effectively automated by use. This one standard approach leads to the best interest of the company or more so for the international business interests globally that warrant the accuracy of all the financial data for the end users and early collaborative decisions by the companies or those whose interest is involved for acquisition/ rights etc.

## Annexure II

(i) Smt. Nirupama Kotru, Director  
Ministry of Corporate affairs  
5th Floor, 'A' Wing, Shastri Bhavan,  
Dr.R.P. Road, New Delhi  
Contact No. 011-23384470  
Email: nirupama.kotru@mca.gov.in

(ii) Dr. Avinash Chandra, Technical Director  
The Institute of Chartered Accountants of India,  
'ICAI Bhawan', Post Box No. 7100,  
Indraprastha Marg, New Delhi-110002.  
Contact No. 011-3011456, 30110427  
Email: [avinash@icai.org](mailto:avinash@icai.org)

(iii) Shri Pankaj Srivastava, Joint Director



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Ministry of Corporate affairs  
5th Floor, 'A' Wing, Shastri Bhavan,  
Dr.R.P. Road, New Delhi  
Contact No. 011-23384657  
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(iv) Dr. Surinder Pal,  
Secretary, Committee on Members in Industry (CMII),  
The Institute of Chartered Accountants of India,  
'ICAI Bhawan', Indraprastha Marg, New Delhi-110002.  
Contact No. 011-30110450

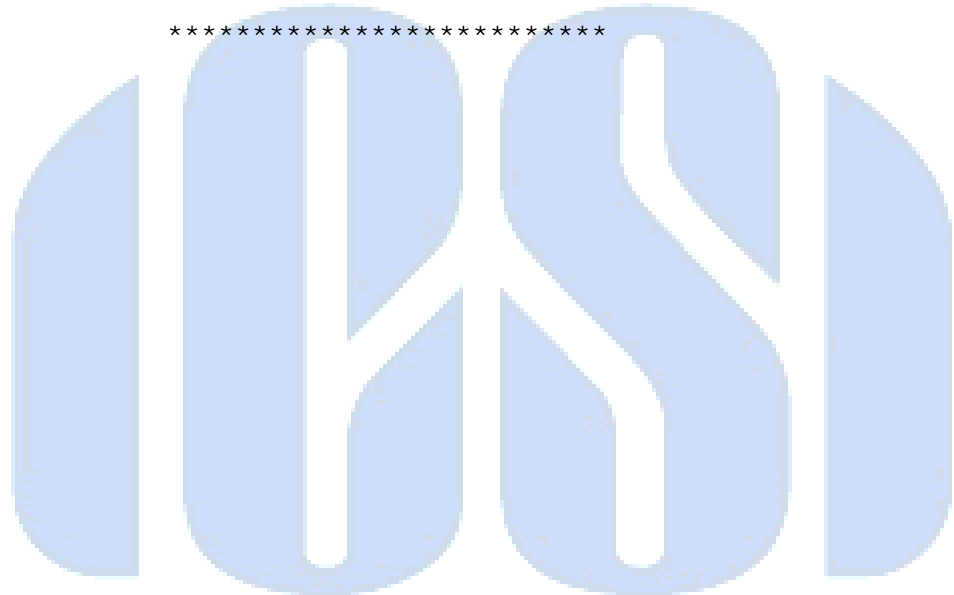
(v) Mr. N.K. Bansal, Secretary,  
Continuing Professional Education (CPE),  
The Institute of Chartered Accountants of India,  
'ICAI Bhawan', Indraprastha Marg, New Delhi-110002.  
Contact No. 0120-3045957

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

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# CS Update

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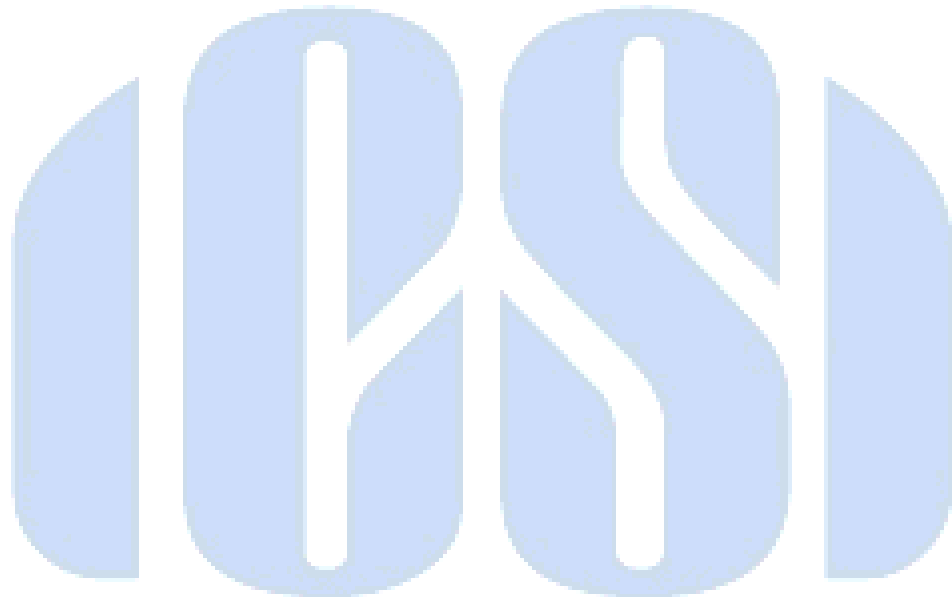
Regional Director, who shall guide Registrar of Companies in the matter.

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](#)

\*\*\*\*\*

## 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](#)

\*\*\*\*\*

## 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)

\*\*\*\*\*



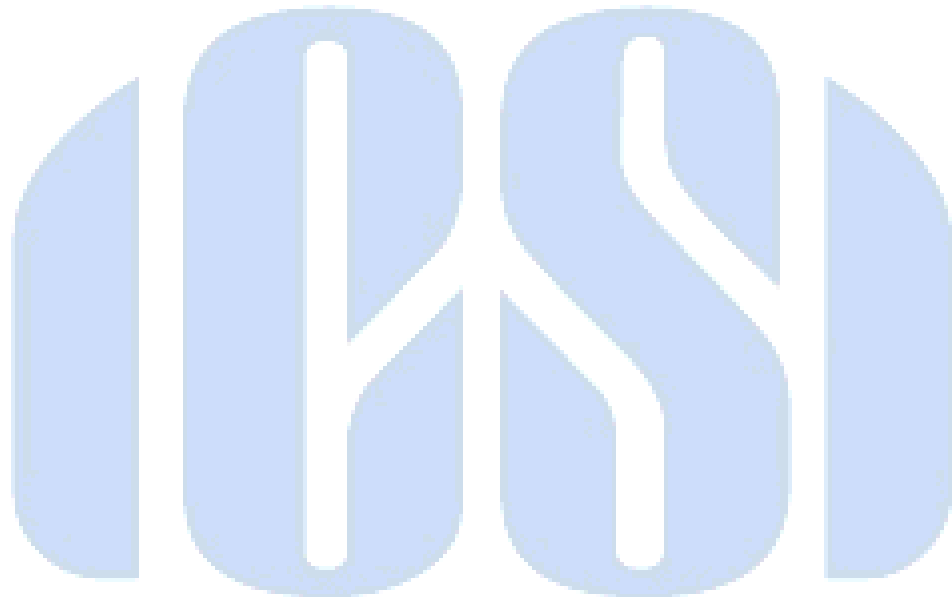


## **PAYMENT OF COMMISSION TO NON-WHOLE TIME DIRECTORS OF THE COMPANY UNDER SECTION 309(4)(b) OF THE COMPANIES ACT, 1956**

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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# CS Update

April 29, 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

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.**



# CS Update

April 29, 2011



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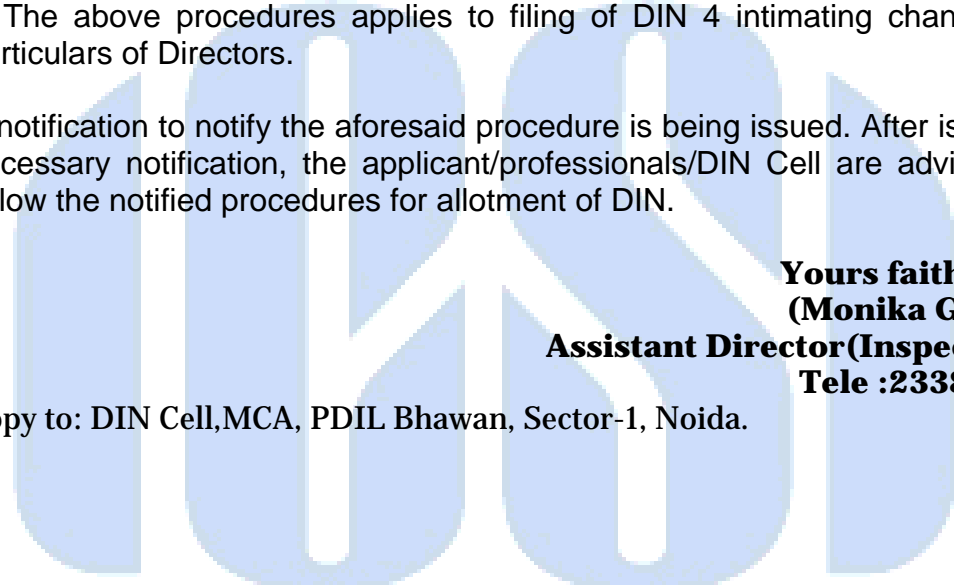


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4. Where the DIN 1 is verified by the professional, the DIN will be approved by the system immediately online.
5. In other cases the DIN cell will examine the application and same shall be disposed of within one or two days.
6. Companies (Directors 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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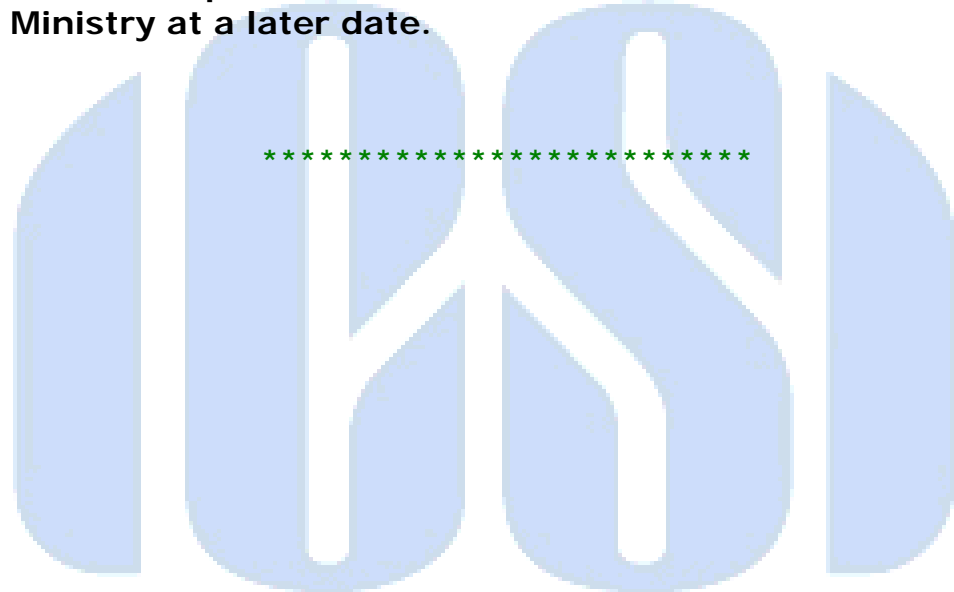


## INDIAN ACCOUNTING STANDARDS CONVERGED WITH IFRS

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.





# CS Update

April 29, 2011



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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

\*\*\*\*\*



# CS Update

April 29, 2011



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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



# CS Update

April 29, 2011



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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;

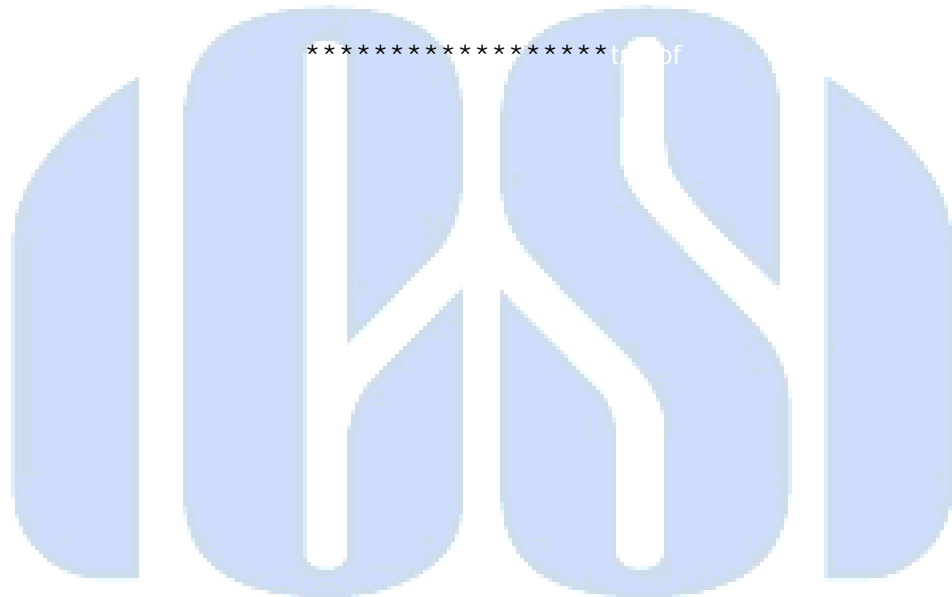
(vi) The holding as well as subsidiary companies in question shall regularly file such data to the various regulatory and Government authorities as may be required by them;

(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





# CS Update

April 29, 2011

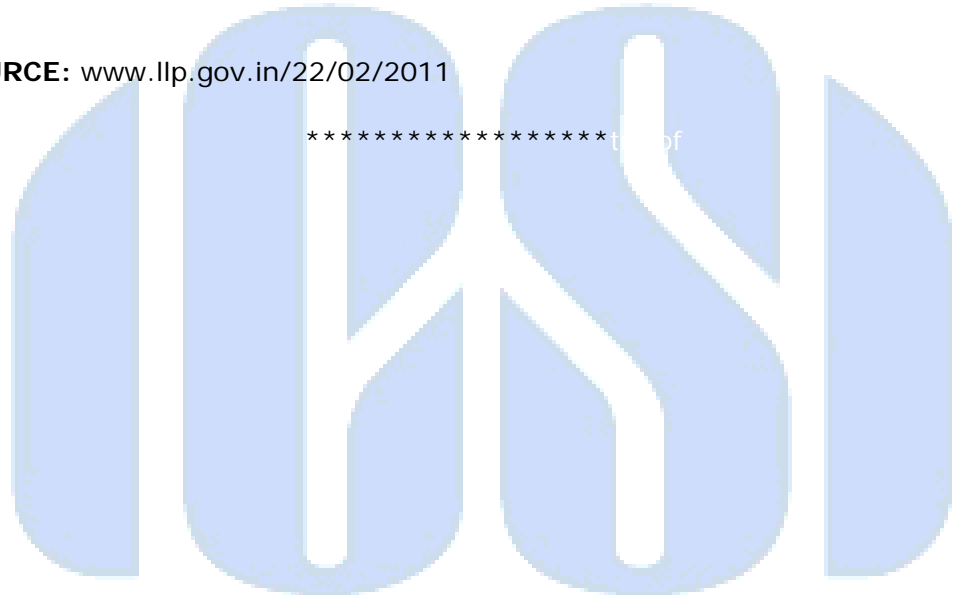
## NEW FEATURE INCLUDED IN E-FORMS ON THE LLP PORTAL.

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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April 29, 2011



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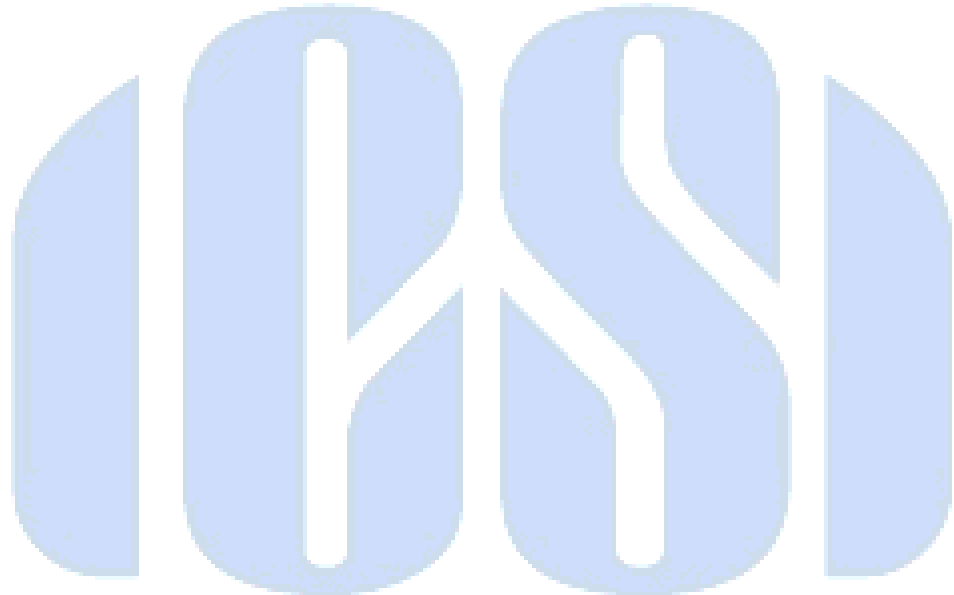
**LLP SHALL MANDATORILY FILE FORM 3 AND FORM 4 WITHIN 30 DAYS OF INCORPORATION & FORM 7 SHALL BE DIGITALLY SIGNED BY APPLICANT'S OWN DSC.**

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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# CS Update

April 29, 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



# CS Update

April 29, 2011



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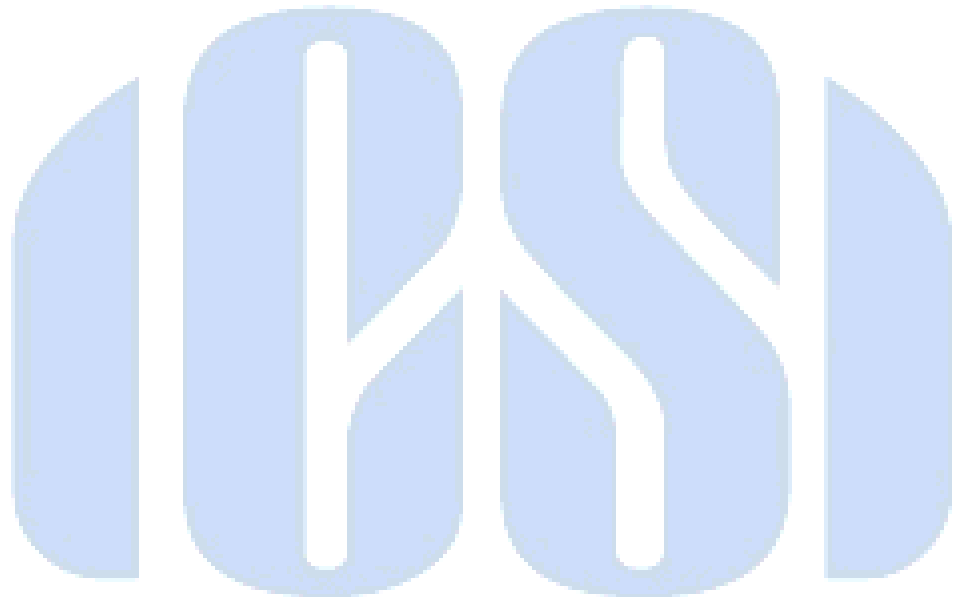


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companies) shall not require Government approval for managerial remuneration in cases where they have no profits/inadequate profits, provided they meet the other conditions stipulated in the Schedule. Details available at the link <http://pib.nic.in/newsite/erelease.aspx?relid=69674>

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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.



# CS Update

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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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# CS Update

April 29, 2011



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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

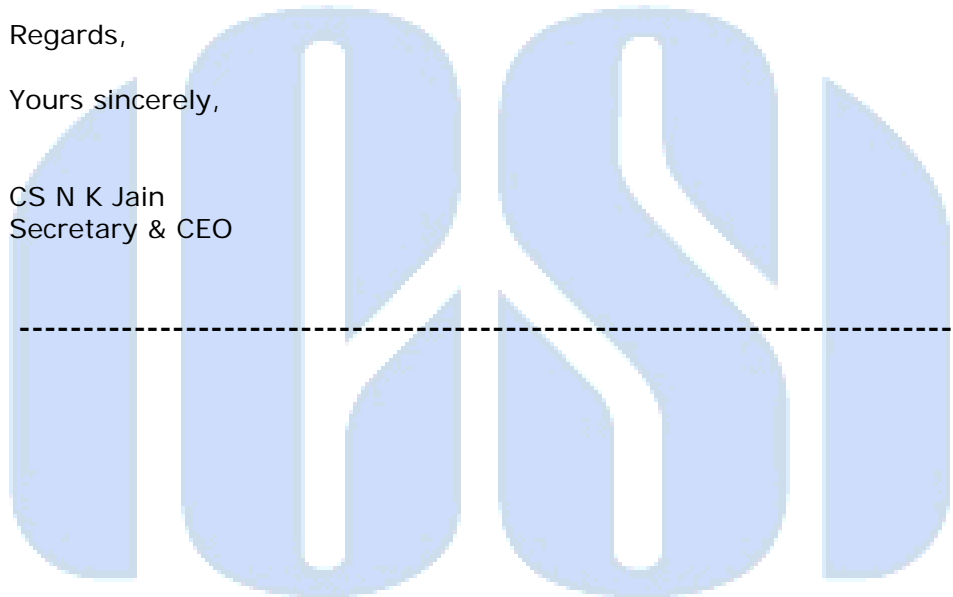
The MCA has vide its General Circular No. 1/2011 dated 3<sup>rd</sup> Feb, 2011 extended the Scheme for a further period of three months i.e. upto 30<sup>th</sup> April, 2011.

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

April 29, 2011



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**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

\*\*\*\*\*



# CS Update

April 29, 2011



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# RBI UPDATE





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## IMPLEMENTATION OF THE ADVANCED MEASUREMENT APPROACH (AMA) FOR CALCULATION OF CAPITAL CHARGE FOR OPERATIONAL RISK

RBI/2010-11/488  
DBOD.No.BP.BC. 88 /21.06.014/2010-11

April 27, 2011

The Chairman and Managing Directors /  
Chief Executive Officers of All Commercial Banks  
(Excluding Regional Rural Banks and Local Area Banks)

Dear Sir,

### Implementation of the Advanced Measurement Approach (AMA) for Calculation of Capital Charge for Operational Risk

Please refer to our circular [DBOD.No.BP.BC.23/21.06.001/2009-10 dated July 7, 2009](#), inter alia advising banks that they can apply for migrating to Advanced Measurement Approach (AMA) for calculation of capital charge for Operational Risk from April 1, 2012 onwards.

2. The Basel II Framework presents three methods for calculating operational risk capital charge in a continuum of increasing sophistication and risk sensitivity:

- i. the Basic Indicator Approach (BIA);
- ii. the Standardised Approach (TSA)/ Alternative Standardised Approach (ASA); and
- iii. Advanced Measurement Approaches (AMA).

3. The guidelines for calculating operational risk capital charge for BIA and TSA/ASA have been issued separately. The guidelines on AMA for computing capital charge for operational risk are [annexed](#). The various aspects of the guidance vis-a-vis the form in which they find place in Basel II Framework, have been elaborated upon in order to provide a comprehensive background to important concepts used in measurement and management of operational risk.

4. This guidance is in addition to that contained in 'Guidance Note on Management of Operational Risk' issued by RBI vide its circular [DBOD.No.BP.BC.39/21.04.118/2004-05 dated October 14, 2005](#) and wherever there is conflict between the two, the guidance contained in this circular would prevail.

5. Banks intending to migrate to AMA for computing capital charge for operational risk are advised to assess their preparedness with reference to these guidelines. As and when they are ready for introduction of AMA, they may first give Reserve Bank of India (RBI) (Chief General Manager-in-Charge, Reserve Bank of India, Department of Banking Operations & Development, Central Office, 12th Floor, Shahid Bhagat Singh Road, Mumbai - 400001), a notice of intention. RBI will first



# CS Update

April 29, 2011



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make a preliminary assessment of the bank's risk management system and its modeling process. If the result of this preliminary assessment is satisfactory, RBI will allow the bank to make a formal application for migrating to AMA. RBI will then perform a detailed analysis of the bank's risk management system and proposed model prior to according approval.

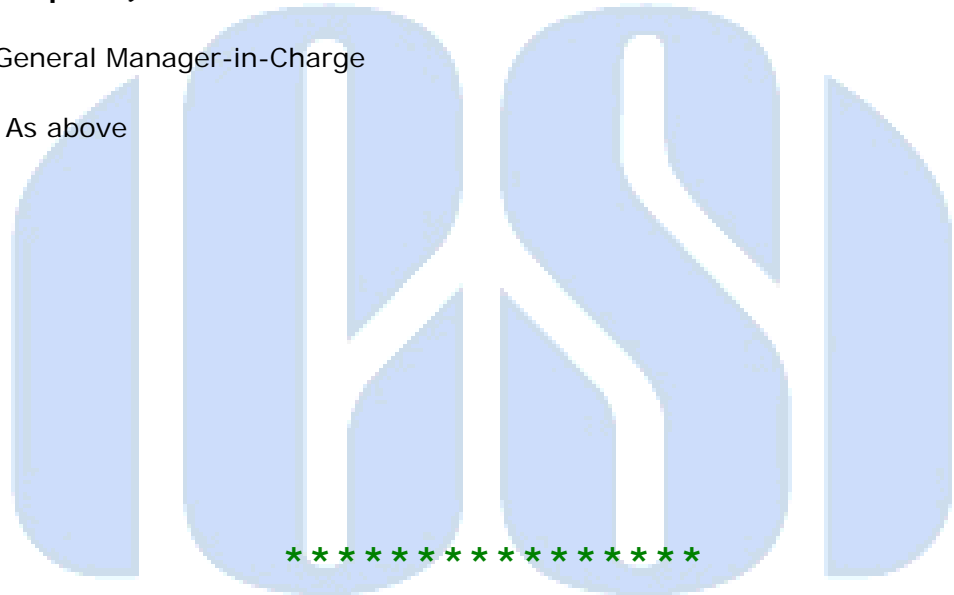
6. It may be reiterated that banks would have the discretion to adopt AMA, while continuing with simpler approaches for computation of capital for credit and market risks. Further, a bank following BIA can switch over to the AMA directly. However, as banks are aware, all the qualitative requirements relating to operational risk management applicable to TSA form part of the qualitative requirements for AMA. Therefore, a bank may also consider moving to TSA first so that the work done in the implementation of TSA could be used to meet part of the requirements for AMA as and when the bank considers switching over to that approach.

Yours faithfully,

**(B. Mahapatra)**

Chief General Manager-in-Charge

Encls: As above



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# CS Update

April 29, 2011



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# SEBI UPDATE





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## REVIEW OF ANNUAL ISSUERS' CHARGES

CIR/MRD/DP/ 05 /2011

April 27, 2011

To,

All Depositories/ all Stock Exchanges

Dear Sir/Madam,

### **Sub: Review of Annual Issuers' charges**

1. Please refer to SEBI Circulars No. MRD/DoP/SE/Dep/Cir-4/2005 dated January 28, 2005 and No. MRD/DoP/SE/Dep/Cir-2/2009 dated February 10, 2009 on the captioned subject matter.

2. In partial modification to the above circulars, it has been decided to modify the methodology of calculating the Annual Issuers charges. The annual issuer charges would be based on the average no. of folios (ISIN positions) during the previous financial year instead of the total number of folios (ISIN positions) as on 31st March of the previous financial year.

3. The average no. of folios (ISIN positions) for an Issuer may be arrived at by dividing the total number of folios for the entire financial year by the total number of working days in the said financial year.

4. All the Stock Exchanges are advised to:-

4.1. implement the above by making necessary amendments to the bye-laws and Listing Agreement, as applicable;

4.2. to bring the provisions of this circular to the notice of the listed companies/Issuers and also to put up the same on the website for easy access to the investors; and

4.3. communicate to SEBI the status of the implementation of the provisions of this circular and the action taken in this regard in the Monthly Development Report.

5. The Depositories are advised to:-

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

5.2. bring the provisions of this circular to the notice of the DPs of the Depositories and the issuers whose securities have been admitted into the depositories and also to disseminate the same on the website; and

5.3. communicate to SEBI the status of the implementation of the provisions of this circular in the Monthly Development Report.

6. The depositories, may adjust the excess or deficit arising out of the change, with the issuers for the current financial year.



# CS Update

April 29, 2011



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



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7. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

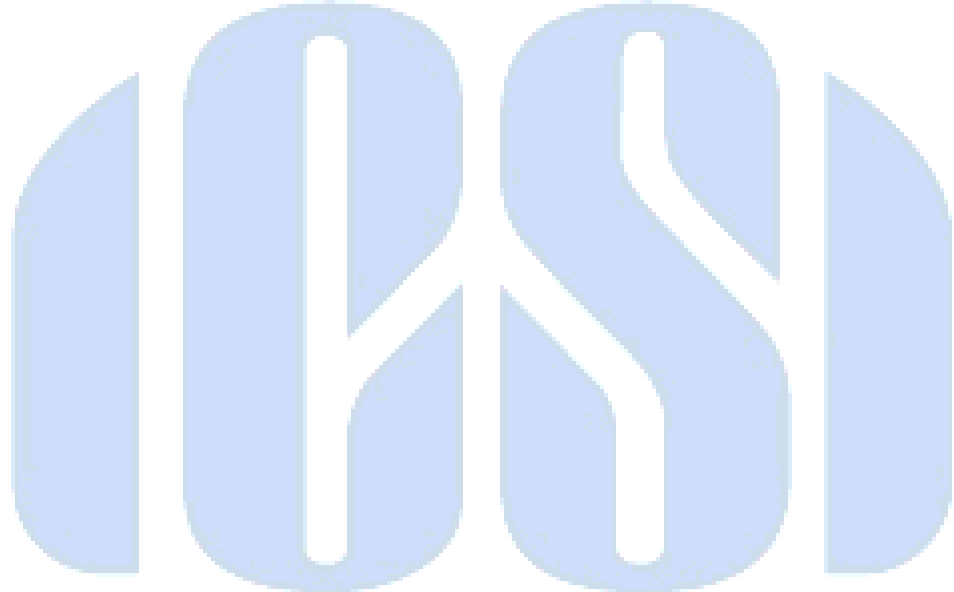
This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

Yours faithfully,

**Harini Balaji**

**Deputy General Manager**  
**022-26449372**  
**harinib@sebi.gov.in**

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# TAX LAW UPDATE





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## SECTION 200A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PROCESSING OF STATEMENT OF TAX DEDUCTED AT SOURCE - PROCEDURE FOR REGULATING REFUND OF EXCESS AMOUNT OF TDS DEDUCTED AND/OR PAID

**CIRCULAR NO. 2/2011 [F.NO. 385/25/2010-IT(B)], DATED 27-4-2011**

Section 200A of the Income-tax Act, 1961 - Deduction of tax at source - Processing of statement of tax deducted at source - Procedure for regulating refund of excess amount of TDS deducted and/or paid

1. The procedure for regulating refund of amount paid by the deductor in excess of the tax deducted at source (TDS) and/or deductible is governed by Board circular No. 285, dated 21-10-1980.

2. Subsequent to issue of circular No. 285, new sections have been inserted under Chapter XVII-B of the Income-tax Act, 1961. References have been received by the Board regarding inclusion of these sections also for the purpose of issue of refund of excess amount of the TDS deducted/deductible.

3. In consideration of the above and in supersession of the circular No. 285, dated 21-10-1980, the Board prescribes the following procedure for regulating refund of amount paid in excess of tax deducted and/or deductible in respect of TDS on residents covered under sections 192 to 194LA of the Income-tax Act, 1961. This circular will not be applicable to TDS on non-residents falling under sections 192, 194E and 195 which are covered by circular No. 7/2007 issued by the Board.

4. The excess payment to be refunded would be the difference between:

(i) the actual payment made by the deductor to the credit of the Central Government; and

(ii) the tax deductible at source.

4.1 In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year.

4.2 In case, the detection of such excess amount is made beyond the financial year concerned, such claim can be made to the Assessing Officer (TDS) concerned. However no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.

5. However, to avoid double claim of TDS by the deductor as well as by the deductee, the following safeguards must be exercised by the Assessing Officer concerned:

5.1 The applicant deductor shall establish before the Assessing Officer that:



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(i) it is a case of genuine error and that the error had occurred inadvertently;

(ii) that the TDS certificate for the refund amount requested has not been issued to the deductee(s); and

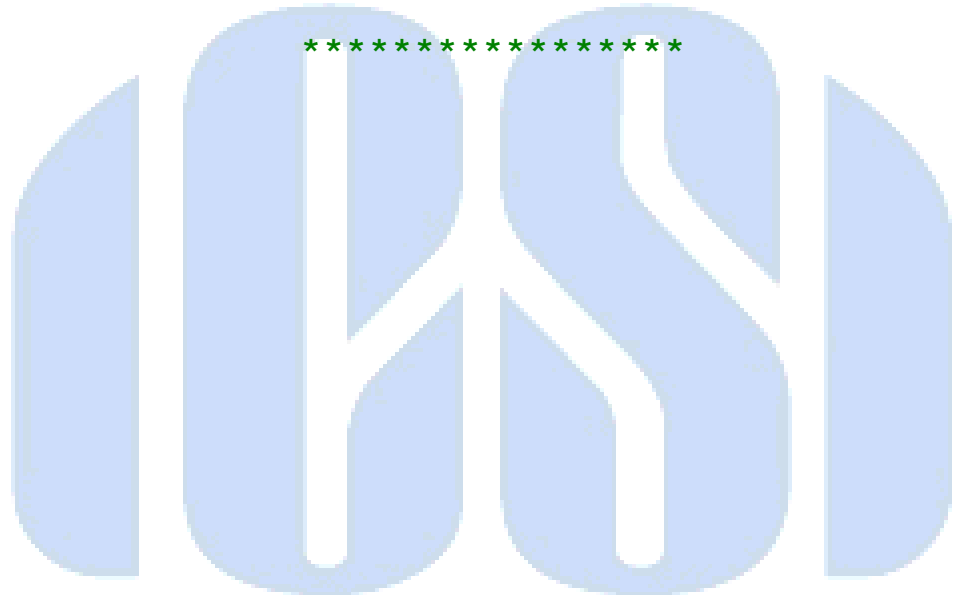
(iii) that the credit for the excess amount has not been claimed by the deductee(s) in the return of income or the deductee(s) undertakes not to claim such credit.

5.2 Prior administrative approval of the Additional Commissioner or the Commissioner (TDS) concerned shall be obtained, depending upon the quantum of refund claimed in excess of Rupees One Lakh and Rupees Ten Lakh respectively.

5.3 After meeting any existing tax liability of the deductor, the balance amount may be refunded to the deductor.

6. In view of provisions of section 200A of the Income-tax Act prescribing processing of statement of TDS and issue of refund with effect from 1-4-2010, this circular will be applicable for claim of refunds for the period upto 31-3-2010.

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## **SERVICE TAX – NOTIFICATION NO. 32/2011 DATED MONDAY, APRIL 25, 2011 – RESCINDS NOTIFICATION NO.25/2006-SERVICE TAX, DATED THE 13TH JULY, 2006**

New Delhi, the 25th April, 2011

### **Notification No.32/2011 – Service Tax**

G.S.R. -(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) **No.25/2006-Service Tax, dated the 13<sup>th</sup> July, 2006**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 418(E) dated the 13<sup>th</sup> July, 2006, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force on the 1<sup>st</sup> day of May, 2011.

[F. No. 334/3/ 2011 – TRU]

(Sanjeev Kumar Singh)

Under Secretary to the Government of India

**NOTIFICATION NO. 25 / 2006-SERVICE TAX,**

**DATED 13-7-2006**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services falling under sub-clauses (s), (t) and (u) of clause (105) of section 65 of the Finance Act, provided or to be provided by **a practicing chartered accountant, a practicing cost accountant and a practicing company secretary** respectively, in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

[F. No. 356/37/2006-TRU]