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CS Update

May 04, 2011

CONTENTS

FROM ICSI

- 12th NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES
- EXCLUSIVE OFFER FOR ICSI MEMBERS FROM EJURIX & ICSI-KP
- FREQUENTLY ASKED QUESTIONS ON ICSI-USE MOU
- COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMMES BY MEMBERS.
- PMQ COURSE IN CORPORATE GOVERNANCE-ENHANCEMENT OF FEES
- INSTITUTE'S RECENT PUBLICATIONS

MCA UPDATE

- CLARIFICATION REGARDING EFFECTIVE DATE OF COMPANIES(PARTICULARS OF EMPLOYEES) AMENDMENT RULES, 2011
- CLARIFICATION IN RESPECT OF GENERAL CIRCULAR NO: 2 /2011 DATED 8TH FEBRUARY, 2011
- GREEN INITIATIVE IN THE CORPORATE GOVERNANCE- APPROVAL OF MINISTRY OF CORPORATE AFFAIRS FOR APPOINTMENT OF AGENCY FOR PROVIDING ELECTRONIC PLATFORM FOR ELECTRONIC VOTING UNDER THE COMPANIES ACT,1956.
- E-FORM NO.32- INTIMATION TO ROC REGARDING PARTICULARS OF APPOINTMENT OF DIRECTORS ETC AND CHANGES THEREIN IN THE COMPANY PURSUANT TO SECTION 303(2) OF THE COMPANIES ACT,1956- FILING OF CONFLICTING RETURN BY CONTESTING PARTIES.
- MARKING A COMPANY AS HAVING MANAGEMENT DISPUTE BY REGISTRAR OF COMPANIES UNDER MCA-21 SYSTEM.
- CHANGE IN EFORMS 2, 3, 18, 23C, 24A AND 32
- GREEN INITIATIVE IN THE CORPORATE GOVERNANCE- CLARIFICATION REGARDING SENDING COPIES OF BALANCE SHEETS AND AUDITORS REPORT ETC., TO THE MEMBERS OF THE COMPANY AS REQUIRED UNDER SECTION 219 OF THE COMPANIES ACT, 1956 THROUGH ELECTRONIC MODE.

RBI UPDATE

- MONETARY POLICY STATEMENT 2011-12
- PLEDGE OF SHARES FOR BUSINESS PURPOSES
- OPENING OF ESCROW ACCOUNTS FOR FDI TRANSACTIONS



CS Update

May 04, 2011



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- WORKING GROUP ON INFORMATION SECURITY, ELECTRONIC BANKING, TECHNOLOGY RISK MANAGEMENT AND CYBER FRAUDS-IMPLEMENTATION OF RECOMMENDATIONS
- ADVANCE REMITTANCE FOR IMPORT OF GOODS – LIBERALISATION
- FOREIGN INVESTMENTS IN INDIA BY SEBI REGISTERED FIIS IN OTHER SECURITIES
- ISSUE OF IRREVOCABLE PAYMENT COMMITMENT TO STOCK EXCHANGES ON BEHALF OF MFS AND FIIS

SEBI UPDATE

- APPLICATIONS SUPPORTED BY BLOCKED AMOUNT (ASBA) FACILITY

TAX LAW UPDATE

- CLARIFICATION ON ISSUES RELATING TO CENVAT CREDIT RULES 2004

FCRA UPDATE

- FCRA COMES INTO FORCE W.E.F MAY 2011

ENVIRONMENT LAW UPDATE

- CORPORATE ENVIRONMENT RESPONSIBILITY

PREVIOUS ISSUES ARE AVAILABLE AT THE FOLLOWING LINK:

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

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May 04, 2011



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FROM FRESH

ICESI





12th NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

The 12th National Conference of Practising Company Secretaries is scheduled to be hold on July 14- 15- 16, 2011 at Ooty, Tamil Nadu.

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The Council of the Institute has decided to hold the 12th 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.



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





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May 04, 2011



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ICSI-KP website : <http://knowledge.icsi.edu>
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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.



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5. What are the different types of membership available?

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?



CS Update

May 04, 2011



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.

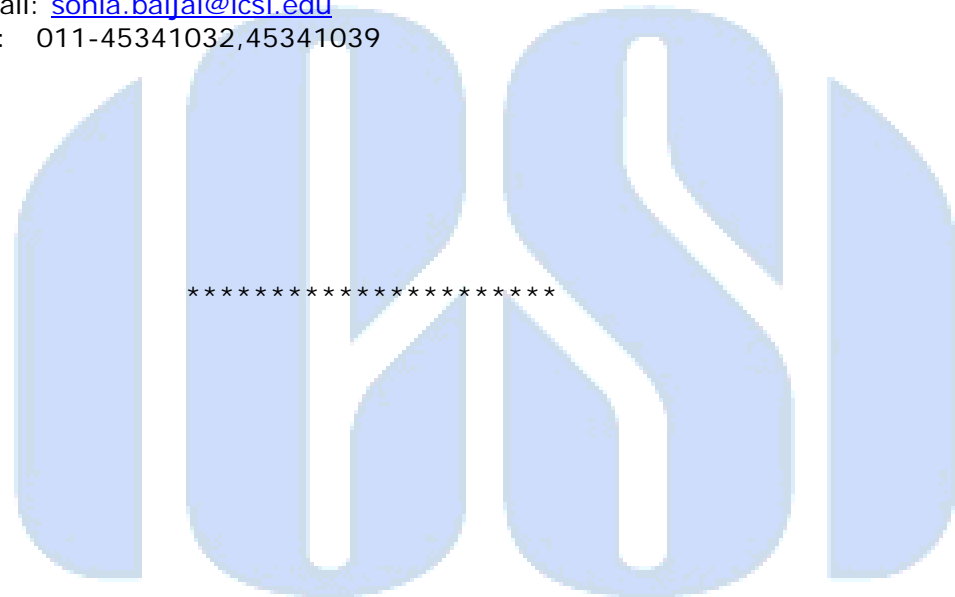
Similarly a Clearing member would have to pay security deposit of 50 Lakh Rupees which constitutes of 25 Lakhs as cash and other 25 Lakhs as non cash component. This is a non interest bearing deposit.

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
Tel: 011-45341032,45341039

Membership Department
United Stock Exchange of India Ltd.
Email: 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 200th 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.



CS Update

May 04, 2011



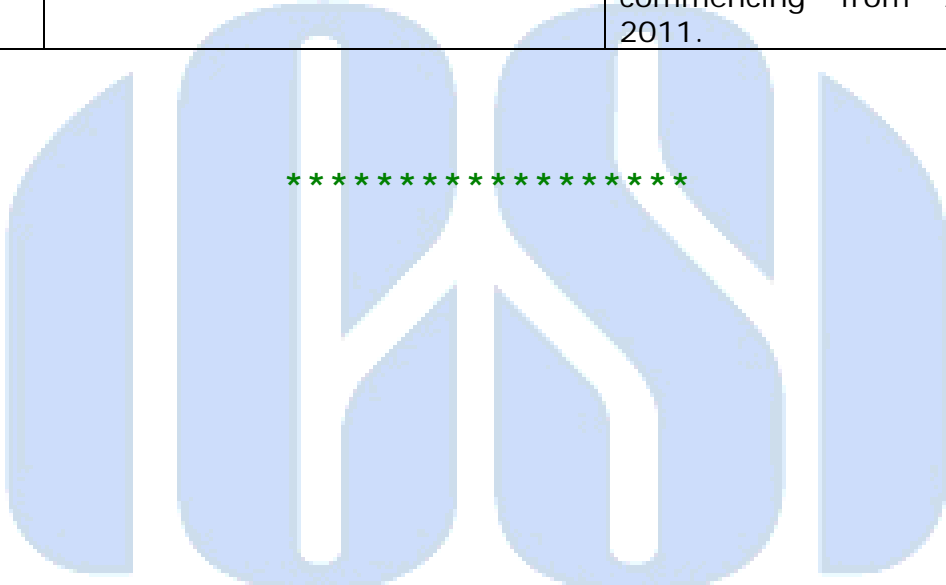
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7.	Carry forward of the excess PCH if the member has already completed the mandatory PCH upto December 31, 2010 and continued to attend Professional Development Programmes during January – March, 2011	The Guidelines for Compulsory Attendance of Professional 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.
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PMQ COURSE IN CORPORATE GOVERNANCE

ENHANCEMENT OF FEES

The Council at its 197th 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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or

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





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MCA UPDATE





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CLARIFICATION REGARDING EFFECTIVE DATE OF COMPANIES (PARTICULARS OF EMPLOYEES) AMENDMENT RULES, 2011

General Circular No. 23/2011

No 2/29/1998-CL.V
Government of India
Ministry of Corporate Affairs
5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Date: 03.05.2011

To

All Regional Directors
All Registrar of Companies

Sub: Clarification regarding effective date of Companies (Particulars of Employees) Amendment Rules, 2011 – reg

Sir,

The Ministry had notified Companies (Particulars of Employees) Amendment Rules, 2011 vide GSR 289 (E) dated 31.03.2011 raising the limit of employee's salary to be disclosed in Directors Report.

2. In this regard, it is clarified that the said notification shall be applicable to all Director's Reports under section 217 of the Companies Act, 1956 approved by the Board of Directors on or after 1.4.2011, irrespective of the accounting year of the annual account, being approved by the Board.

Copy to: All concerned

Yours faithfully,


(Monika Gupta)
Assistant Director



CLARIFICATION IN RESPECT OF GENERAL CIRCULAR NO: 2 /2011 DATED 8TH FEBRUARY, 2011

General Circular No: 22/2011

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

5th floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110 001.
Dated: 2nd May, 2011

To

All Regional Directors
All Registrars of Companies

Subject: Clarification in respect of General Circular No: 2 /2011 dated 8th February, 2011

Sir,

It has been observed that certain companies are seeking clarification in respect of circular No. 2/11 dated 8.2.2011 issued by the Ministry in respect of exemption u/s 212 (8) of the Companies Act, 1956. The point raised is in respect of applicability of condition No. (ii) of the circular, requesting the Ministry to delete the condition in respect of unlisted companies as this condition is applicable to listed companies as per SEBI guidelines.

- The Ministry is aware of the limited scope of the SEBI Rule. However, the decision has been taken to ensure transparency in those cases where balance sheets of subsidiaries are not attached.
- In this regard, it is clarified that companies which desire to take benefit of exemption allowed under this circular would have to fulfill the conditions stipulated therein even if they are unlisted.

Yours faithfully

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

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GREEN INITIATIVE IN THE CORPORATE GOVERNANCE- APPROVAL OF MINISTRY OF CORPORATE AFFAIRS FOR APPOINTMENT OF AGENCY FOR PROVIDING ELECTRONIC PLATFORM FOR ELECTRONIC VOTING UNDER THE COMPANIES ACT, 1956.

Circular No.21/2011

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

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated: 02.05.2011

All the Regional Directors,
All the Registrar of Companies

Subject: Green Initiative in the Corporate Governance -- Approval of Ministry of Corporate Affairs for appointment of agency for providing electronic platform for electronic voting under the Companies Act, 1956.

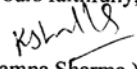
Sir,

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, 1956 through electronic mode.

Section 192A of the Companies Act, 1956 read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 already recognizes voting by electronic mode for postal ballot. Some of the listed company have already started using electronic platform of certain agencies for providing and supervising the electronic platform for electronic voting.

In order to have secured electronic platform for capturing accurate electronic voting processes, It is hereby clarified that the agency appointed for providing and supervising electronic platform for electronic voting shall be an agency duly approved by the Ministry of Corporate Affairs.

It is further clarified that for the above purpose, National Securities Depository Limited (NSDL) and Central Depository Services (India) Ltd (CDSL) are being approved by the Ministry of Corporate Affairs subject to the condition that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Govt. of India, Electronics Niketan, 6 CGO Complex, New Delhi - 110 003, INDIA. Once they obtain the same and inform the Ministry, they will be authorized to undertake these activities.

Yours faithfully,

(Kamna Sharma)
Assistant Director

Copy to: All concerned



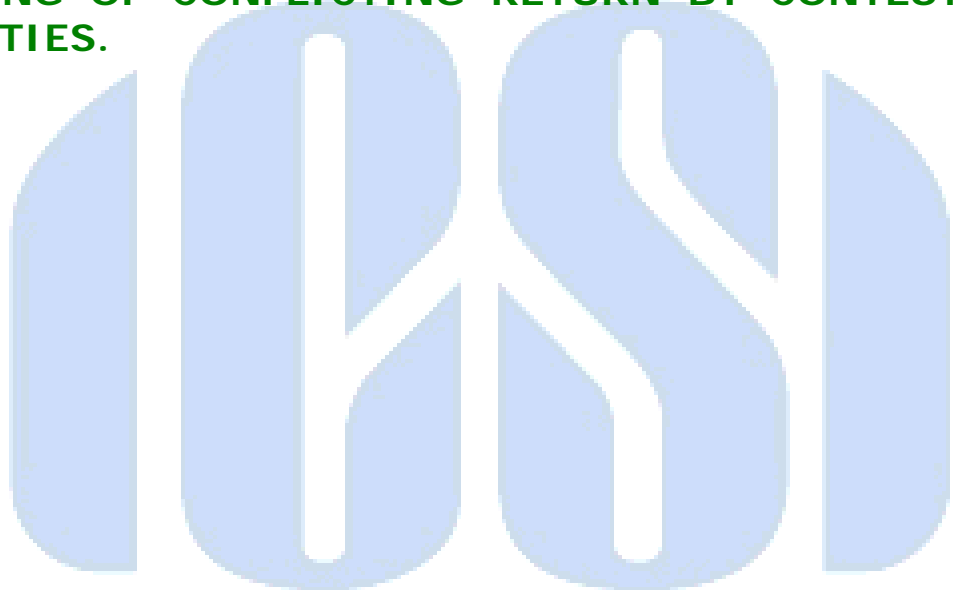
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E-FORM NO.32- INTIMATION TO ROC REGARDING PARTICULARS OF APPOINTMENT OF DIRECTORS ETC AND CHANGES THEREIN IN THE COMPANY PURSUANT TO SECTION 303(2) OF THE COMPANIES ACT,1956- FILING OF CONFLICTING RETURN BY CONTESTING PARTIES.



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General Circular No. 20/2011

No 17/135/2011-CL.V
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated: 02.05.2011

To

All Regional Directors
All Registrar of Companies

Sub : E-Form No. 32 – Intimation to Registrar of Companies regarding particulars of appointment of Directors etc and changes therein in the company pursuant to section 303 (2) of the Companies Act, 1956 – filing of conflicting return by contesting parties.

Sir,

The Ministry had earlier clarified vide Circular dated 04.05.1993 that it is neither desirable nor possible for the Registrar to sit in judgment to ascertain the rightful claims of the Directors in case of a dispute and it is for the parties concerned to settle their disputes by approaching the court. In case conflicting documents are filed by the contesting group of Directors, Registrar may take the document on record, if the same are otherwise in order by informing the parties concerned, (contesting group of Directors), in writing, that the documents have been taken on records without prejudice to the rights of the parties to settle the dispute in the court of competent authority.

2. In order to cut timelines and bring more transparency in the working of office of Registrar of Companies, the Form 32 will also be taken on records under Straight Through Process (STP) mode i.e., the information given in the e-form 32 is being taken on file maintained by the Registrar of Companies through electronic mode on the basis of statement of correctness given by the filing company and further verification by the practicing professional i.e., Chartered Accountants, Cost Accountants and Company Secretaries.

3. The above instructions are being hereby revised to the extent that all particulars filed by the companies in e-form 32 are being placed on records of the Registrar of Companies through the STP process as filed by the company and verified by the practicing professional, without prejudice to the rights of the parties to settle the dispute, if any, in a court of competent jurisdiction.

Yours faithfully,

(Monika Gupta)
Assistant Director

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CS Update

May 04, 2011



MARKING A COMPANY AS HAVING MANAGEMENT DISPUTE BY REGISTRAR OF COMPANIES UNDER MCA-21 SYSTEM.

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General Circular No. 19/2011

No 17/135/2011-CL.V
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated: 02.05.2011

To

All Regional Directors
All Registrar of Companies

Sub: Marking a company as having management dispute by Registrar of Companies under MCA-21 system.

Sir,

In the present electronic MCA-21 system, there is a facility with the Registrar of Companies to mark a company "marked as having management dispute" on the basis of complaints received in his office. This marking creates an alert and the documents are not approved and remain in the registry as work in process till it is demarked by the Registrar. In order to bring uniformity of practices by all Registrar of Companies it is clarified that the Registrar of Companies shall use this facility as under: --

- (i) The Registrar of Companies shall mark a company as having management dispute in only those cases where the court or Company Law Board has directed to maintain the status-quo with reference to any e-forms including status of Directors in the company or
- (ii) The Court or Company Law Board has granted any injunction or stay in taking the document on record and Registrar of Companies is a party in such court cases and/or the directions have been issued to the Registrar of Companies.
- (iii) In other matter, where the Registrar of Companies is not a party and such orders have been passed and has not been served to the Registrar of Companies, it is for the parties to comply to such orders and in case of non-compliances, the law shall take its own course.

Yours faithfully,

(Monika Gupta)
Assistant Director

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CHANGE IN EFORMS 2, 3, 18, 23C, 24A AND 32

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RBI UPDATE





CS Update

May 04, 2011



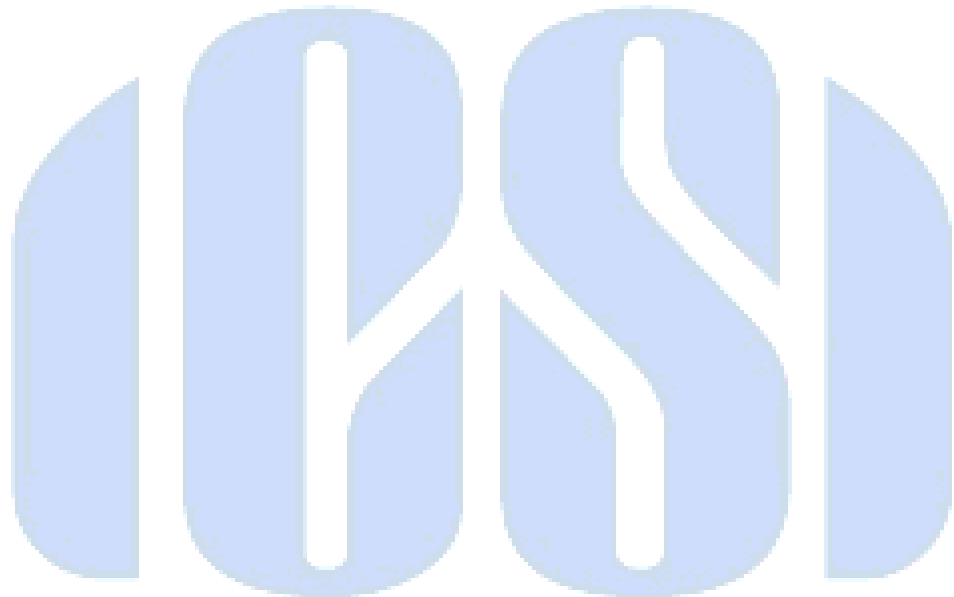
MONETARY POLICY STATEMENT 2011-12

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PLEDGE OF SHARES FOR BUSINESS PURPOSES

RBI/2010-11/497

A. P. (DIR Series) Circular No. 57

May 2, 2011

To

All Authorised Dealer Category - I banks

Madam / Sir,

Pledge of shares for business purposes

Under the extant FEMA regulations, powers have been delegated to the Authorised Dealer Category – I (AD Category – I) banks to convey ‘no objection’ to the resident eligible borrowers under the extant External Commercial Borrowings (ECB) guidelines for pledge of shares held by the promoters, in accordance with the Foreign Direct Investment (FDI) policy, in the borrowing company / domestic associate company of the borrowing company as security for the ECB, subject to certain conditions [c.f. [A. P. \(DIR Series\) Circular No. 1 dated July 11, 2008](#)]. Pledge of shares in respect of all other FDI related transactions requires the prior permission of the Reserve Bank.

2. The extant FEMA regulations have since been reviewed and it has been decided to further liberalise, rationalise and simplify the processes associated with FDI flows to India and reduce the transaction time. Accordingly, it has been decided to delegate powers to the AD Category – I banks to allow pledge of shares of an Indian company held by non-resident investor/s in accordance with the FDI policy in the following cases subject to compliance with the conditions indicated below:

(i) Shares of an Indian company held by the non-resident investor can be pledged in favour of an Indian bank in India to secure the credit facilities being extended to the resident investee company for bonafide business purposes subject to the following conditions :

- a.in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;
- b.submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;
- c.the Indian company has to follow the relevant SEBI disclosure norms; and
- d.pledge of shares in favour of the lender (bank) would be subject to compliance with the Section 19 of the Banking Regulation Act, 1949.

(ii) Shares of the Indian company held by the non-resident investor can be pledged in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor / non-resident promoter of the Indian company or its overseas group company, subject to the following conditions :

- a.loan is availed of only from an overseas bank;
- b.loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;
- c.overseas investment should not result in any capital inflow into India;



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May 04, 2011



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d. in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and
e. submission of a declaration/ annual certificate from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

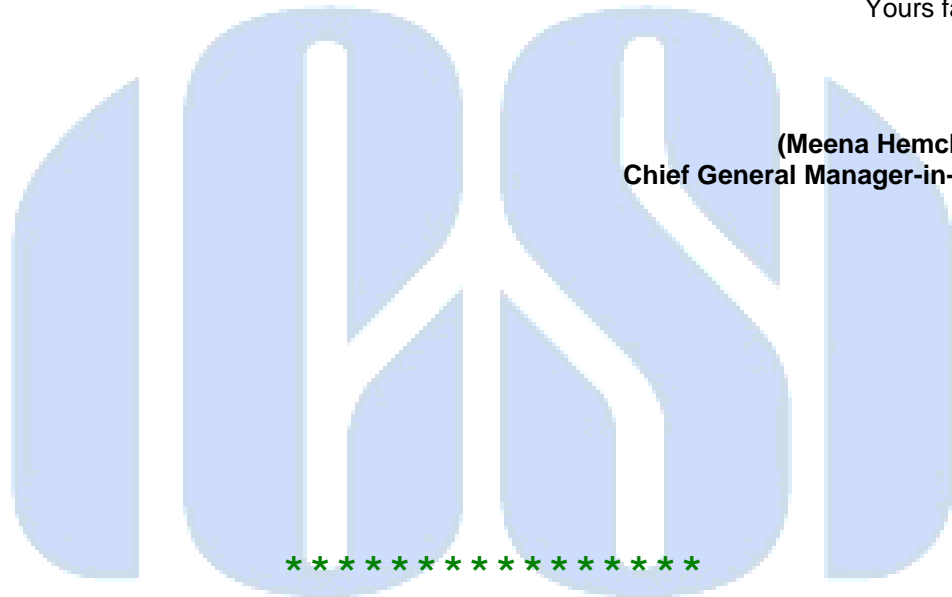
2. Necessary amendments to the [Notification No. FEMA 20/2000-RB dated May 3, 2000](#), are being issued separately.

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

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

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge





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OPENING OF ESCROW ACCOUNTS FOR FDI TRANSACTIONS

RBI/2010-11/498
A. P. (DIR Series) Circular No. 58

May 02, 2011

To
All Category-I Authorised Dealer Banks

Madam / Sir,

Opening of Escrow Accounts for FDI transactions

Attention of the Authorised Dealer Category – I (AD Category - I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide [Notification No. FEMA. 20/2000-RB dated May 3, 2000](#), as amended from time to time, and [A.P. \(DIR Series\) Circular No. 62 dated May 24, 2007](#), permitting AD Category – I banks to open Escrow account and Special account on behalf of non-resident corporates for acquisition/transfer of shares/ convertible debentures of an Indian company through open offers/ delisting/ exit offers, subject to compliance with the relevant SEBI [Substantial Acquisition of Shares and Takeovers (SAST)] Regulations, 1997 and other applicable SEBI regulations. In all other cases of opening/maintaining of Escrow accounts for FDI related transactions, prior approval from the Reserve Bank is necessary.

2. It is observed that the Escrow mechanism facilitates FDI transactions in cases where parties to the share purchase agreement desire to complete the due diligence process before they finalize the agreement for the same and accordingly, there is a time lag between payment of purchase consideration and the receipt of the shares. To provide operational flexibility and ease the procedure for such transactions, it has been decided to permit AD Category – I banks to open and maintain, without prior approval of the Reserve Bank, **non-interest bearing** Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and / or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions as given in [Annex](#). It has also been decided to permit SEBI authorised Depository Participants, to open and maintain, without prior approval of the Reserve Bank, Escrow accounts for securities subject to the terms and conditions as given in [Annex](#). In both cases, the Escrow agent shall necessarily be an AD Category- I bank or SEBI authorised Depository Participant (in case of securities' accounts). These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from / to the non- residents.

3. Necessary amendments to [Notification No. FEMA 5/2000-RB dated May 3, 2000](#) [Foreign Exchange Management (Deposit) Regulations, 2000] are being notified separately.



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May 04, 2011



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

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

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge

ANNEX

[Annex to A.P.(DIR Series) Circular No. 58 dated May 02, 2011]

1. The Escrow account in INR would be maintained only with an AD Category – I bank in India. The Escrow account may be opened jointly and severally. Further, securities kept / linked with such Escrow accounts may be linked with demat account maintained with SEBI authorised Depository Participants.

2. The account shall be non-interest bearing.

3. No fund or non-fund based facilities would be permitted against the balances in the Escrow account.

4. Permitted credits:

i) Receipt of foreign inward remittance as consideration towards issue or transfer of shares through normal banking channels; or

ii) Receipt of rupee consideration through the normal banking channels from India by the resident acquirers of shares who proposes to acquire them from non-resident holders by way of transfer.

5. Permitted debits:

i) Remittance of consideration for issue of shares or transfer of shares directly into the bank accounts of the beneficiary (issuer in India or transferor of shares in India or abroad); or
ii) Remittance of consideration for refund to the initial remitter of funds in case of failure / non-materialization of the FDI transaction for which the Escrow account was opened.

6. The underlying FDI transaction for which the Escrow account is opened should be compliant with extant FEMA provisions. Further, for the purposes of FDI reporting, date of transfer of funds into the bank account of the issuer or transferor of shares, shall be the relevant date of remittance.



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May 04, 2011



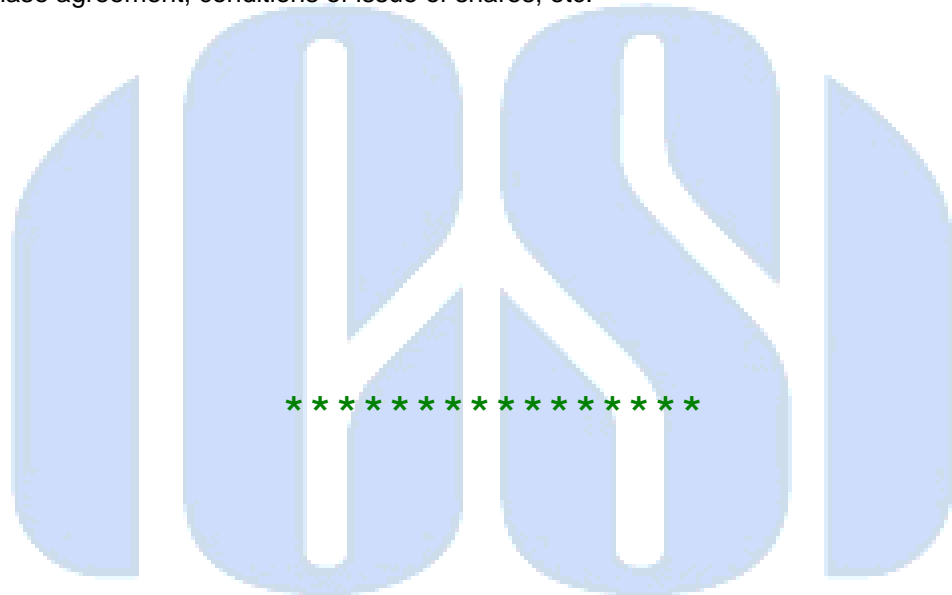
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7. Where the transaction is governed by SEBI guidelines/regulations, operation of the Escrow accounts shall also be in accordance with the relevant SEBI regulations.
8. Balance in the Escrow account, if any, may be repatriated at the then prevailing exchange rate (i.e., the exchange rate risk will be borne by the person resident outside India acquiring the shares), after all the formalities in respect of the said acquisition are completed. In cases, where proposed acquisition/ transfer does not materialise, the AD Category – I bank may allow repatriation/ refund of the entire amount lying to the credit of the Escrow account on being satisfied with the bonafides of such remittances.
9. The Escrow account shall remain operational for a maximum period of six months only and the account shall be closed immediately after completing the requirements as outlined above or on completion of six months from the date of opening of such account, whichever is earlier. In case the Escrow account is required to be maintained beyond six months, specific permission from the Reserve Bank has to be sought.
10. Requirement of compliance with KYC guidelines issued by the Reserve Bank /SEBI shall rest with the AD Category – I bank/ SEBI authorised Depository Participants.
11. The terms of the Escrow account shall be laid down strictly in the Escrow agreement, Share purchase agreement, conditions of issue of shares, etc.





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WORKING GROUP ON INFORMATION SECURITY, ELECTRONIC BANKING, TECHNOLOGY RISK MANAGEMENT AND CYBER FRAUDS- IMPLEMENTATION OF RECOMMENDATIONS

RBI/2010-11/494
DBS.CO.ITC.BC.No. 6/31.02.008/2010-11

April 29, 2011

The Chairman / Chief Executives of

All Scheduled Commercial Banks (excluding RRBs)

Dear Sir / Madam,

Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds- Implementation of recommendations

As you are aware, following the announcement in the April 2010 Monetary Policy Statement, the Working Group on Information Security, Electronic Banking, Technology Risk Management and Cyber Frauds was constituted, under the Chairmanship of Shri G. Gopalakrishna, Executive Director, RBI. The Group examined various issues arising out of the use of Information Technology in banks and made its recommendations in nine broad areas. These areas are **IT Governance, Information Security, IS Audit, IT Operations, IT Services Outsourcing, Cyber Fraud, Business Continuity Planning, Customer Awareness programmes and Legal aspects**. The report was placed on the RBI website on January 21, 2011. Subsequently, on February 1, 2011, views/ comments of all stake-holders and the public at large on the Report were invited. After taking into account various responses, final guidelines in the respective areas as mentioned above are now being issued to banks for implementation. The [guidelines](#) are enclosed herewith for implementation by banks.

(b) The guidelines are not “one-size-fits-all” and the implementation of these recommendations need to be risk based and commensurate with the nature and scope of activities engaged by banks and the technology environment prevalent in the bank and the support rendered by technology to the business processes. Banks with extensive leverage of technology to support business processes would be expected to implement all the stipulations outlined in the circular. For example, banks which do not offer transactional facilities in internet banking would not be required to implement specific measures for transactional internet banking facility outlined in the guidelines. Further, various instructions in “IT operations” chapter like detailed configuration management practices may not be necessary for banks that do not develop or maintain critical applications internally, though such practices may be expected from the external vendor providing such services.

(c) The Group had endeavored to generate self-contained and comprehensive guidelines. This has resulted in reiteration of certain guidelines already prescribed by RBI, for example, in certain areas relating to information security, outsourcing, BCP and IS Audit. However, there are certain guidelines like the checklist for computer audit prescribed in the year 2002 which on the whole cannot be ignored since the nature of coverage is different. In the event of a direct conflict with an earlier guideline, the new



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May 04, 2011



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guideline would be the basis for implementation by banks. Else, the relevant guidelines prescribed earlier would be an adjunct to the present guidelines issued herewith. It would be the endeavor of RBI to develop the enclosed guidelines as a Master Circular incorporating relevant old and new circulars on related subject areas in due course. In the event of any further clarifications in the matter, banks may approach RBI for further guidance.

(d) The Group's report was largely technology neutral except in exceptional circumstances where a specific technology/methodology may be suggested due to legal reasons or for enhanced security or for illustrative purpose. It is clarified that except where legally required, banks may consider any other equivalent/better and robust technology/methodology based on new developments after carrying out a diligent evaluation exercise.

(e) Banks may have already implemented or implementing some or many of the requirements indicated in the circular. In order to provide focused project oriented approach towards implementation of guidelines, banks would be required to conduct a formal gap analysis between their current status and stipulations as laid out in the circular and put in place a time-bound action plan to address the gap and comply with the guidelines. However, banks need to ensure implementation of basic organizational framework and put in place policies and procedures which do not require extensive budgetary support, infrastructural or technology changes, by October 31, 2011. The rest of the guidelines need to be implemented within period of one year unless a longer time-frame is indicated in the circular. There are also a few provisions which are recommendatory in nature, implementations of which are left to the discretion of banks.

(f) Given the fact the guidelines are fundamentally expected to enhance safety, security, efficiency in banking processes leading to benefits for banks and their customers, the progress in implementation of recommendations may be monitored by the top management on an ongoing basis and a review of the implementation status may be put up to the Board at quarterly intervals. Banks may also incorporate in their Annual Report from 2011-12 onwards broadly the measures taken in respect of various subject areas indicated in these guidelines.

(g) The measures suggested for implementation cannot be static. Banks need to pro-actively create/fine-tune/modify their policies, procedures and technologies based on new developments and emerging concerns.

(h) Reserve Bank of India would review the progress in implementation of the guidelines in its Quarterly Discussions with banks and would examine comprehensively the efficacy of implementation of the guidelines commensurate with nature and scope of operations of individual banks from the next AFI cycle (for the period 2011-12) onwards.

(i) Please acknowledge receipt.

Yours faithfully,

(G. Jagan Mohan Rao)

Chief General Manager-in-charge

Encl : Guidelines on Information security, Electronic Banking, Technology risk management and Cyber frauds



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ADVANCE REMITTANCE FOR IMPORT OF GOODS – LIBERALISATION

RBI/2010-11/493
A.P. (DIR Series) Circular No. 56

April 29, 2011

To

All Authorised Dealers in Foreign Exchange

Madam/ Sir

Foreign Exchange Management Act, 1999- Advance Remittance for Import of Goods - Liberalisation

Attention of Authorised Dealer Category – I (AD Category-I) banks is invited to A. P. (DIR Series) Circular No.106 dated June 19, 2003, [A. P. \(DIR Series\) Circular No.15 dated September 17, 2003](#) and [A.P. \(DIR Series\) Circular No.09 dated August 21, 2008](#) in terms of which AD Category – I banks are required to obtain an unconditional, irrevocable standby Letter of Credit (LC) or a guarantee from an international bank of repute situated outside India or a guarantee of an AD Category – I bank in India, if such a guarantee is issued against the counter guarantee of an international bank of repute situated outside India, for an advance remittance exceeding USD 100,000 or its equivalent.

2. With a view to liberalising the procedure, it has been decided to enhance the aforesaid limit of USD 100,000 to USD 200,000 or its equivalent, with immediate effect for importers (other than a Public Sector Company or a Department/Undertaking of Central/State Governments where the requirement of bank guarantee is to be specifically waived by the Ministry of Finance, Government of India for advance remittances exceeding USD 100,000 or its equivalent).

3. All the other instructions including the facility to waive the requirement of the standby LC/ bank guarantee for advance remittance up to USD 5,000,000 or its equivalent, where the AD Category – I bank is satisfied about the track record and bonafides of the importer based on their internal Board approved policy, contained in A.P. (DIR Series) Circular No. 09 dated August 21, 2008, shall remain unchanged.

4. Authorised Dealers may bring the contents of this circular to the notice of their constituents and customers concerned.

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

Yours faithfully,

(Meena Hemchandra)
Chief General Manager- in Charge



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FOREIGN INVESTMENTS IN INDIA BY SEBI REGISTERED FIIS IN OTHER SECURITIES

RBI/2010-11/492
A.P. (DIR Series) Circular No. 55

April 29, 2011

To,

All Category – I Authorised Dealer banks

Madam / Sir,

Foreign investments in India by SEBI registered FIIs in other securities

Attention of Authorised Dealers Category – I (AD Category - I) banks is invited to paragraph 1 of Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide [Notification No. FEMA 20 / 2000 -RB dated May 3, 2000](#) as amended from time to time, in terms of which, a SEBI registered Foreign Institutional Investor (FII) may purchase, on repatriation basis, listed non-convertible debentures / bonds issued by an Indian company, subject to such terms and conditions mentioned therein and limits as prescribed for the same by the RBI & the SEBI from time to time. The present limits for such investments is USD 15 billion for FII investment in corporate debt with an additional limit of USD 5 billion for FII investment in bonds with a residual maturity of over five years, issued by Indian companies which are in the infrastructure sector, where “infrastructure” is defined in terms of the extant guidelines on External Commercial Borrowings (ECB).

2. It has now been decided, in consultation with the Government, to enhance the FII investment limit in listed non-convertible debentures / bonds, with a residual maturity of five years and above, and issued by Indian companies in the infrastructure sector, where ‘infrastructure’ is defined in terms of the extant ECB guidelines, by an additional limit of USD 20 billion taking this limit from USD 5 billion to USD 25 billion (with this the total limit available to FIIs for investment in listed non convertible debentures / bonds would be USD 40 billion with a sub limit of USD 25 billion for investment in listed non-convertible debentures / bonds issued by corporates in the infrastructure sector). Further, such investment by FIIs in listed non-convertible debentures / bonds would have a minimum lock-in period of three years. However, FIIs are allowed to trade amongst themselves during the lock-in period. It has also been decided to allow SEBI registered FIIs to invest in unlisted non-convertible debentures / bonds issued by corporates in the infrastructure sector, provided that such investment is as per the aforementioned terms and conditions.

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



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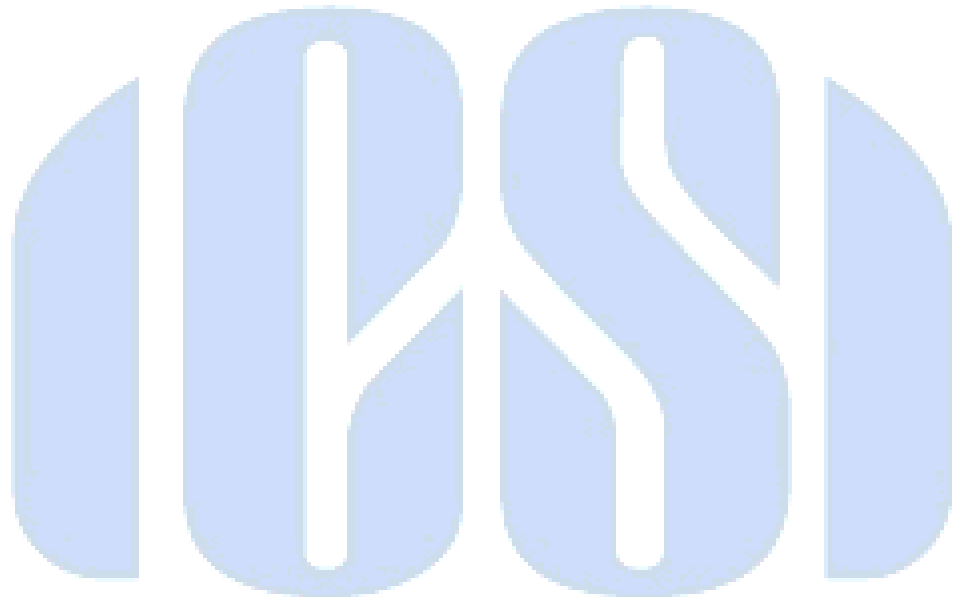


4. Necessary amendments to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated May 3, 2000) are being notified separately.

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

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge





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ISSUE OF IRREVOCABLE PAYMENT COMMITMENT TO STOCK EXCHANGES ON BEHALF OF MFS AND FIIS

RBI/2010-11/491
A.P. (DIR Series) Circular No. 54

April 29, 2011

To

All Category – I Authorised Dealer banks

Madam / Sir,

Issue of Irrevocable Payment Commitment (IPCs) to Stock Exchanges on behalf of Mutual Funds (MFs) and Foreign Institutional Investors (FIIs)

Attention of Authorised Dealer Category - I (AD Category-I) banks is invited to Regulation 5(2) and Schedule 2 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide [Notification No. FEMA 20/2000-RB dated May 3, 2000](#), as amended from time to time, in terms of which Foreign Institutional Investors (FIIs) registered with SEBI may purchase shares or convertible debentures of an Indian company under the Portfolio Investment Scheme (PIS). Further, attention of AD Category – I banks is also invited to the Foreign Exchange Management (Guarantee) Regulations, notified vide [Notification No. FEMA 8/2000-RB dated May 3, 2000](#), as amended from time to time, in terms of which, no fund based / non-fund based facilities are permitted to the FIIs.

2. It has now been decided to allow custodian banks to issue Irrevocable Payment Commitments (IPCs) in favour of the Stock Exchanges / Clearing Corporations of the Stock Exchanges, on behalf of their FII clients for purchase of shares under the PIS. Issue of IPCs should be in accordance with the Reserve Bank regulations on banks' exposure to the capital market issued by the Reserve Bank from time to time. Further, AD Category – I banks may also comply with the instructions issued by our Department of Banking Operations and Development (DBOD) vide [circular no. DBOD Dir. BC.46/13.03.00/2010-11 dated September 30, 2010](#).

3. Necessary amendments to the Foreign Exchange Management (Guarantee) Regulations, 2000, notified vide Notification No. FEMA 8/2000-RB dated May 3, 2000 will be issued separately.

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

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

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge



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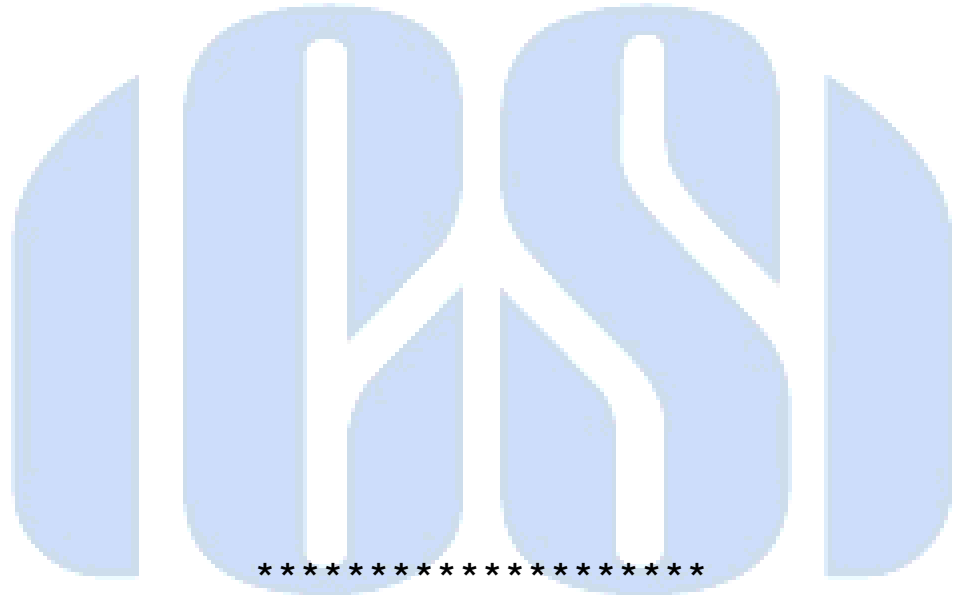
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APPLICATIONS SUPPORTED BY BLOCKED AMOUNT (ASBA) FACILITY

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TAX LAW UPDATE





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CLARIFICATION ON ISSUES RELATING TO CENVAT CREDIT RULES 2004–

Circular No.943/04/2011-CX

New Delhi, 29th April 2011

F.No.354/73/2011 -TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

To
The Chief Commissioners of Central Excise and Service Tax (All),
The Director General (All),
The Commissioners of Service Tax (All),
The Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Sub: Clarification on issues relating to CENVAT Credit Rules 2004–
Regarding.**

The CENVAT Credit Rules 2004 were amended along with the Budget 2011 announcements vide Notification 3/2011-CE (NT) dt 1.3.2011. A few changes were further effected vide Notification 13/2011-CE (NT) dt 31.3.2011. On a few issues trade has requested for clarity. Accordingly the following clarifications are presented issue wise in a tabular format.

S.No.	Issue	Clarification
1	Can credit of capital goods be availed of when used in manufacture of dutiable goods on which benefit under Notification 1/2011- CE is availed or in provision of a service whose part of value is exempted on the condition that no credit of inputs and input services is taken?	As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed are exempted goods [Rule 2(d)]. Taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken, are exempted services [Rule 2(e)]. Hence credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed.
2	Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?	The list is only illustrative. The principle is that cenvat credit is not allowed when any goods and services are used primarily for personal use or consumption of employees.
3	How is the “no relationship whatsoever with the manufacture of a final product” to be determined?	Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression “no relationship whatsoever with the manufacture of a final product” must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or



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		indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.
4	Is the credit of input services used for repair or renovation of factory or office available?	Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.
5	Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression "activities related to business"?	The definition of input services allows all credit on services used for clearance of final products upto the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.
6	Can the credit of input or input services used exclusively in trading, be availed?	Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed.
7	What shall be the treatment of credit of input and input services used in trading before 1.4.2008?	Trading is an exempted service. Hence credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up to 20% of the total duty liability as provided for in extant Rules.
8	While calculating the value of trading what principle to follow- FIFO, LIFO or one to one correlation?	The method normally followed by the concern for its accounting purpose as per generally accepted accounting principles should be used.
9	Are the taxes and year end discounts to be included in the sale price and cost of goods sold while calculating the value of trading?	Generally accepted accounting principles need to be followed in this regard. All taxes for which set off or credit is available or are refundable/ refunded may not be included. Discounts are to be included.
10	Does the expression "in or in relation" used in Rule 6 override the definition of "input" under Rule 2(k) for determining the eligibility of Cenvat credit?	The definition of "input" is given in Rule 2(k) and Rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. While applying Rule 6, the expression "in or in relation" must be read harmoniously with the definition of "inputs".
11	Sub-rules 3B and 3C of rule 6 apply to whole entity or independently in respect of each registration?	The sub-rules 6(3B) and 6(3C) impose obligation on the entities providing banking and financial services (in case of a bank and a financial institution including a non-banking financial company) or life insurance services or management of investment under ULIP service. The obligation is applicable independently in respect of each registration. When such a concern is exclusively rendering any other service from a registered premises, the said rules do not apply. In addition to BoFS and life insurance services if any other service is rendered from the same registered premises, the said rules will apply and due reversals need to be done.



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12	Is the credit available on services received before 1.4.11 on which credit is not allowed now? e.g. rent-a-cab service	The credit on such service shall be available if its provision had been completed before 1.4.2011.
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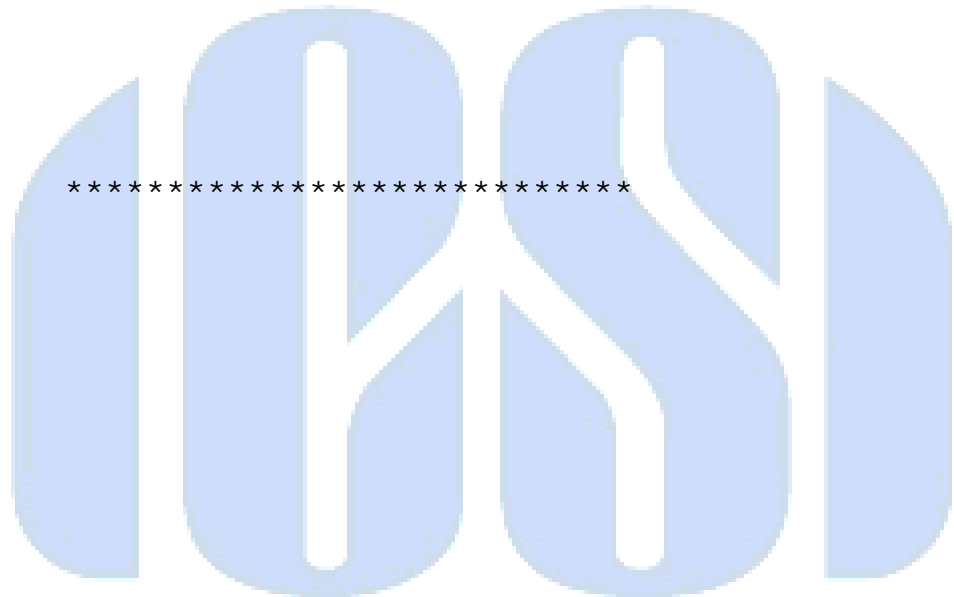
Trade and Industry as well as field formations may be suitably informed.

Receipt of this Circular may kindly be acknowledged.

Hindi version will follow.

Yours faithfully,

(Shobhit Jain)
OSD, TRU





CS Update

May 04, 2011



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FCRA UPDATE





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FCRA COMES INTO FORCE W.E.F MAY 2011

Foreign Contribution Regulation Act (FCRA) 2010 has been notified and it has come into force with effect from 1/5/2011. FCR Rules 2011 have also come into force from 1/5/2011.

Key features of FCRA 2010 include the following:

- Concept of 'permanent' registration done away with; A five-year registration is provided so that dormant organisations do not continue. All existing registered organisations are deemed to be on five-year validity from now.
- 'person' has been defined in a broader sense
- 'Organisations of political nature' cannot receive foreign funds.
- Ceiling on administrative expenses has been prescribed.
- Procedure for suspension and cancellation of registration has been Prescribed.
- Statutory role provided for banking sector in regulation.
- Time limits have been provided for accountability of officials
- To deal with bona fide mistakes of NGOs, provision has been made for 'compounding' of offences.

Details are available on Ministry of Home Affairs website-mha.nic.in.

**RS/KKA
(Release ID :71909)**

Source: pib.nic.in/02.05.2011



CS Update

May 04, 2011



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ENVIRONMENT LAW UPDATE





CS Update

May 04, 2011



CORPORATE ENVIRONMENT RESPONSIBILITY

CLICK HERE TO VIEW: <http://moef.nic.in/downloads/public-information/corporate-env-res.pdf>

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