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CS Update

August 10, 2011

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FROM ICS





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39th

National Convention of Company Secretaries

Dates

October 13-14-15, 2011

Venue

Jaypee Palace Hotel & Convention Centre, Agra

10 PCH
for
Members of
ICSI

THEME

Corporate Dynamism and Innovative Professionalism

Sub Themes

- Dynamic Business Environment, Innovation and Risk Management
- Regulatory Convergence, Technology and Innovative Professionalism
- From Compliance to Creative Solutions – Vision 2020 challenges
- Leveraging Globalisation for Trade in Professional Services
- Harmonisation of Companies Bill, 2009 vis-à-vis other Corporate Laws

Further details of the Convention and delegate registration form available at the link:

<http://www.icsi.edu/WebModules/LinksOfWeeks/39NC-Brochure.pdf>





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CORPORATE GOVERNANCE CONCLAVE



Make sure that everything must find a second use before being recycled or thrown.

Building together a culture of good governance...



Corporate Governance And Beyond...

CORPORATE GOVERNANCE CONCLAVE

Theme:
"Integrating Sustainability into Corporate DNA"

Date: Friday, 12th August, 2011.

Time: 09:30 a.m. - 02:00 p.m.

Venue: Sovereign 1, Le Méridien, Windsor Place, New Delhi.

Chief Guest:

Dr. M. Veerappa Moily
Hon'ble Union Minister of Corporate Affairs

Key Note Address:

Smt. Sheila Dikshit
Hon'ble Chief Minister of Delhi

Guest of Honour:

Shri Arun Maira, Member, Planning Commission

Special Address:

Shri D. K. Mittal, Secretary, Department of Financial Services, Ministry of Finance.

Dr. J. J. Irani, Former Director, TATA Sons Limited



The Institute of Company Secretaries of India (ICSI) is organising the first "ICSI Corporate Governance Week" from 08th to 12th August, 2011, during which programmes on corporate governance, sustainability, ethics & integrity, carbon foot-prints, good corporate citizenship and "Go Green" initiatives will be organised at all ICSI centres across the country.

Knowledge Partners



Supported by



(Fees: Rs. 1,000, for Corporate Members (NIRC) - Rs. 500, 2PCH)

Promoting Good Governance Amongst Corporates



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

Headquarters: ICSI House, 22, Institutional Area, Lodi Road, New Delhi -110 003.
Phone: 011-41504444, 45341000 Fax: 011-24626727 Email: info@icsi.edu Website: www.icsi.edu



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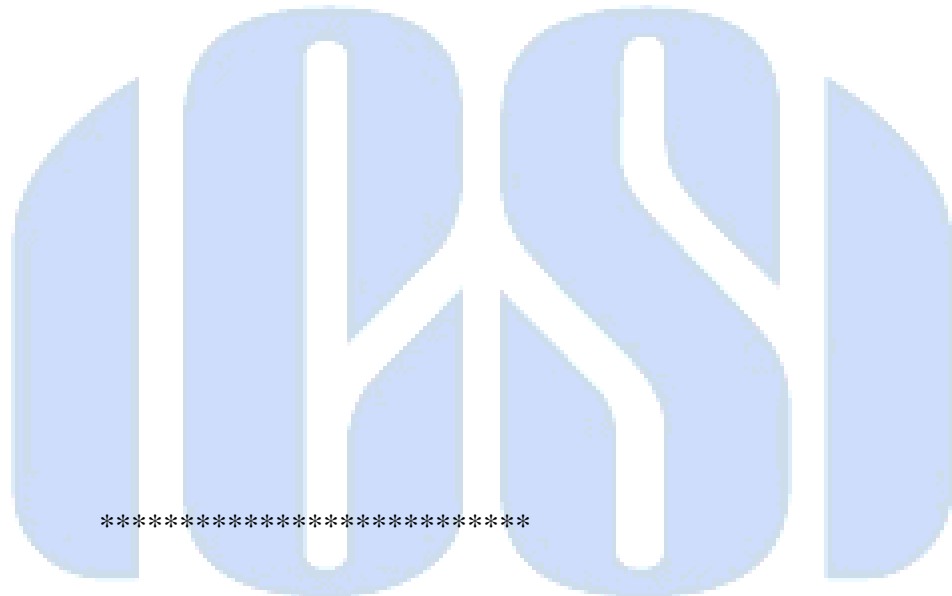


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RECORDING OF WEBCAST ON XBRL ARRANGED BY ICSI

Details can be accessed at: <http://www.streamonweb.com/ICSI>







CG & CSR : WATCH

The Institute has always been in the frontline to promote good corporate governance and it has been the constant endeavour of the Institute to raise awareness among the members and students in Corporate Governance arena. This watch gives an update of the latest happenings in the area of Corporate Governance and Corporate Social Responsibility.

NEW DEVELOPMENTS

1. Corporate Governance Blueprint 2011, Malaysia, launched on 8 July 2011

The Securities Commission Malaysia's five-year Corporate Governance Blueprint (Blueprint) provides the action plan to raise the standards of corporate governance in Malaysia by strengthening self and market discipline and promoting greater internalisation of the culture of good governance.

Developed through a highly consultative process with industry, the Blueprint focuses on six connected themes of the corporate governance ecosystem namely shareholder rights, the roles of institutional investors, boards, gatekeepers and influencers, disclosure and transparency as well as public and private enforcement.

The recommendations in the Blueprint will be implemented over a five year period. Most of the recommendations will be applied through a corporate governance code and changes to the Listing Requirements, both of which are expected to take effect by early 2012.

The Blueprint is divided into various chapters. Chapter two sets out proposals for a new code governing institutional investors. Chapter three recommends that boards adopt a charter setting out, amongst other things, the board's functions and responsibilities as well as the key values, principles and ethos of the company. The charter should also include information about the company's governance arrangements, including the committees formed and the division of powers between the board, committees, chairman and CEO. Chapter four sets out five pillars of disclosure and transparency and makes recommendations regarding the content of the Commission's Corporate Governance Code. Chapter five makes wide-ranging recommendations, including greater clarity regarding the role of company secretaries and widening the obligations regarding mandatory whistle-blowing. Chapter six explains that shareholders are able to bring a statutory derivative action where the company has suffered harm but notes that there has only been one reported case. The chapter recommends further research to explore ways in which private enforcement can be promoted, including whether the Securities Commission should have a greater role.

The Securities Commission welcomes feedback from all interested parties and the public on the Blueprint. All feedback can be emailed to CGblueprint@seccom.com.my by **15 September 2011**.

The **Corporate Governance Blueprint 2011** can be accessed at:
<http://www.sc.com.my>

2. GOCC Governance Act of 2011 [Republic Act No. 10149] of Republic of the Philippines approved by President on 6th June 2011

The GOCC Governance Act of 2011 has been enacted in Philippines to promote financial viability and fiscal discipline in government-owned or -controlled corporations (GOCC) and to strengthen the role of the state in its governance and management to make them more responsive to the needs of public interest and for other purposes.

The Act will have wide-ranging reforms in the GOCC sector which constitute a substantial portion of the government assets and liabilities.

In accordance with the Act, a body named the Governance Council for Government-Owned or Controlled Corporations (GCG) will be created, further the GOCC Governance Commission (GGC) will monitor the performances of the 157 GOCCs in the country.

Among others, the functions of the GCG is to adopt a manual encompassing all issues concerning GOCC operations; take charge of endorsing to the President the individuals qualified to be Appointive Directors; assess GOCC operations regularly; and determine the relevance of a GOCC and make a recommendation to the President whether to abolish, merge, privatize, reorganize, or streamline the corporation in question.

Also among the GCG functions are to recommend a reasonable compensation system for employees and officers of GOCCs; monitor the performance of GOCCs and ensure that operations are consistent with government programs and policies; and recommend approval or disapproval with regard to the creation of a

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GOCC.

GCG shall also recommend Government Corporate Governance Standards applicable to GOCCs, which shall refer to a system whereby shareholders, creditors, and other stakeholders of a corporation ensure that management enhances the value of the corporation as it competes in an increasingly global market place.

The **Act** can be accessed at:

<http://www.gov.ph/2011/06/06/republic-act-no-10149/>

GREEN CORNER

GREEN INDIA

Reduce, Reuse, Recycle



Reduce – Check unwanted consumption & wastage; turn off the lights, carpool, and conserve energy, etc.

Reuse – Think of probable usage before throwing away any material,

Recycle – Prefer recycling the waste material rather than simply dumping discards.

Something Good

"We hope to establish an independent regulator — **the National Environment Appraisal and Monitoring Authority** — soon. Staffed by dedicated professionals, it will work full time to evolve better and more objective standards of scrutiny,"

PM Manmohan Singh --- said at the international seminar on "Global Environment and Disaster Management, law and society in the national capital."

To Remember:

August 8 - World Senior Citizen's day

August 12 - International Youth Day, recognized by the UN

August 19 - World Humanitarian Day

Quote of the Month

"The ultimate test of man's conscience may be his willingness to sacrifice something today for future generations whose words of thanks will not be heard."

—*Gaylord Nelson*, former governor of Wisconsin, co-founder of Earth Day

Forthcoming Events

CSR Asia Summit --- The Summit is the annual flagship event of CSR Asia which aims to be the most innovative and thought-provoking gathering on corporate social responsibility in Asia. Themed "**Asian Growth: Global Responsibility**", the conference will bring together over 400 international delegates to discuss key CSR issues and strategies, and provide new insights for businesses, governments, CSR practitioners and NGOs.

– 27th- 28th September 2011– Hotel Istana , Kuala Lumpur, Malaysia.

Corporate Secretaries International Association --- First International Corporate Governance Conference – "**Sustainable Corporate Governance – Towards a Global Model ?**"

--21-23 September 2011- JW Marriott Hotel, Shanghai.

Feedback & Suggestions

Readers may give their feedback and suggestions on this page to Mrs. Alka Kapoor, Joint Director, ICSI (alka.kapoor@icsi.edu)

Disclaimer:

The contents under **CG & CSR: Watch** have been collated from different sources. Readers are advised to cross check from original sources.



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MCA UPDATE





COMPANY LAW SETTLEMENT SCHEME, 2011

General Circular No.59 /2011

**F. No. 2/11/2011-CL V
Government of India
Ministry of Corporate Affairs**

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi,
Dated the 05th Aug, 2011

To

All Regional Director,
All Registrars of Companies.

Subject: Company Law Settlement Scheme, 2011

Sir,

It has been observed that a large number of companies are not filing their due statutory documents (i.e. Balance Sheets and Annual Returns) timely with the Registrar of Companies. Due to this, the records available in the electronic registry are not updated and thereby are not available to the stakeholders for inspection. Further, due to not filing the documents on time, companies are burdened with additional fee, facing the prosecutions and being debarred from filing other documents electronically as provided in Circular No. 33/2011 dated 01.06.2011 also.

2. In order to give an opportunity to the defaulting companies to enable them to make their default good by filing such belated documents and to become a regular compliant in future, the Ministry, in exercise of the powers under Section 611(2) and 637B (b) of the Companies Act, 1956 has decided to introduce a Scheme namely, "Company Law Settlement Scheme, 2011," condoning the delay in filing documents with the Registrar, granting immunity from prosecution and charging additional fee of 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under. The details of the Scheme are as under:-

- (i) The scheme shall come into force on the **12th Aug, 2011** and shall remain in force up to **31st Oct, 2011**.

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(ii) **Definitions** - In this Scheme, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 1956 (1 of 1956);

(b) "company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act;

(c) "defaulting company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act, which has made a default in filing of documents on the due date(s) specified under the Companies Act, 1956 and rules made there under;

(d) "designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company.

(iii) **Applicability**: - Any "defaulting company" is permitted to file belated documents, which were due for filing till **30.06.2011**, in accordance with the provisions of this Scheme:

(iv) **Manner of payment of fees and additional fee on filing belated document for seeking immunity under the Scheme** - The defaulting company shall pay statutory filing fees as prescribed under the Companies Act and rules made there under along with an additional fee of 25 percent of the actual additional fee standardised under sub-section (2) of Section 611 of the Companies Act, 1956, payable on the date of filing of each belated document;

(v) **Withdrawal of appeal against prosecution launched for the offences**- If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of which application is made under this Scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish the proof of such withdrawal along with the application;





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(vi) **Application for issue of immunity in respect of document(s) filed under the scheme** - The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form annexed, after closure of Scheme and after the document(s) are taken on file, or on record or approved by the Registrar of Companies as the case may be, but not after the expiry of six months from the date of closure of the Scheme. There shall not be any fee payable on this Form;

(vii) **Order by designated authority granting immunity from the penalty and prosecution** - The designated authority shall consider the application and upon being satisfied shall grant the immunity certificate in respect of documents filed in the Scheme;

(viii) **Scheme not to apply to certain documents** -

(a) This Scheme shall not apply to the filing of documents other than the following documents:-

Form 20 B - Form of filing annual return by a company having a share capital

Form 21 A - Particulars of annual return for the company not having share capital

Form 23AC & 23ACA - Form for filing Balance Sheet and Profit & Loss account

Form 66 - Form for submission of Compliance Certificate with the Registrar

(b) This Scheme shall not apply to companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies;

(ix) After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s);



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3. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956 against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kshul S'.

(Kamna Sharma)
Assistant Director

Encl: As above





CORRIGENDUM TO GENERAL CIRCULAR NO. 54/2011

GENERAL CIRCULAR NO. 58/2011

F. No. 35/6/2011/Insolvency

Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110001
Dated 1st August, 2011

To

**All Regional Directors
All ROCs
All Official Liquidators**

Subject: Corrigendum to General Circular No. 54/2011.

In view of the representations from professional Institutes, it has been decided to amend Para (c) the Circular No. 54/2011 dated 26th July, 2011. Para (c) of the said Circular may be read as under:

(c) "In each case the OL will file an application praying to the Court to direct the management of the company to submit following information duly verified by a Chartered Accountant/a **Company Secretary/a Cost Accountant in practice:-**"

2. All other clauses of the said Circular remain unaltered.

(Jaikant Singh)
Director

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MASTER CIRCULAR ON PROSECUTION OF DIRECTORS

Master Circular No. 1/2011

No.3/57/2011/CL- II
Government of India
Ministry of Corporate Affairs

5th Floor, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi-110001,
Dated the 29th July, 2011

To,

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

Sub: Master Circular on Prosecution of Directors – Regarding

Sir,

The question of treating a person as an officer in default by ROCs when prosecutions are launched against a company and its directors for violations under Companies Act, 1956 has come up for examination time and again. The Department has issued various circulars in this regard so far. It may be recollected that the Department vide circular No.42/7/73-CL.II dated 20.9.1973 had clarified that a person appointed as a nominee director, whatever interest he represents or protects is responsible for the proper discharge of his obligations and fiduciary responsibilities under the statute in the similar manner as an ordinary directors. However, in the same circular, it was further clarified that nominees of institutions set up under Acts having non-obstante clauses can enjoy immunity from prosecutions.

2. In Departmental circular No.6/98 dated 12.11.1998, it was clarified that where penal provisions provide for "punishment of officers in default", prosecutions should be filed primarily against managing director(s)/ whole time director(s)/manager(s) and the company secretary, if any. It was also clarified that only in those cases where the above mentioned managerial personnel are not available in any company; prosecutions should be against ordinary directors. In the same circular, it was also clarified that there are provisions in the Act which though do not use the expression "officers who are in default" for fastening liabilities in case of their contraventions, yet the persons against whom the proceedings can be initiated is specified. In such cases, the persons expressly specified in the relevant provisions of the Act should alone be prosecuted.



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3. It has come to the notice of the Department that in spite of various rulings available on the question of "officers in default" who can be held liable for violations of a particular provision under the Companies Act, the ROCs are arraying all the directors of the company for the violations without differentiating between officer in default and or others.

4. 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, Financial Institutions and Banks having participation in equity of a Company also nominate Directors to the Board of such companies.

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

In super session 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 Director as indicated above shall be held liable for any act of omission or commission by the company or by any officer 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 authorized to receive as Director of the Board as per the decision of the Board. All the Regional Directors are advised to direct Inspecting Officers also to examine the Board's minutes of the company to arrive at a conclusion if Independent director is also responsible for any violation of the provisions of Companies Act, 1956.

5. 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



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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

6. 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.

(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

7. 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-3 database



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available in the Registry. The guidelines issued herein above should be applied and wrongful prosecution should be avoided. Wherever the Registrar of Companies has doubt as to whether director/officer can be held liable after applying the above parameters, they should refer to Regional Director, who shall guide Registrar of Companies in the matter.

8. All the Regional Directors are required to ensure that such cases are reviewed, 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.

This master circular consolidates circular No.2/2003 dated 7.7.2003, No.08/2011 dated 25.3.2011, No.1/88/2010-CL.II dated 18.4.2011 and 47/2011 dated 14.7.2011 respectively.

Yours faithfully

Sd/-

(R K Bakshi)

Deputy Director
Tel. No. 23073230

Copy to:

1. PS to CAM
2. PS to MOS
3. PS to Secy. MCA
4. PS to AS, MCA
5. PS to Joint Secy. (A) & Joint Secy. (R)
6. PS to DII (DR)
7. PS to DII (Policy)
8. PS to Economic Advisor
9. Spare Copies





FILING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT IN XBRL MODE

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Circular No: 57/2011

No. HQ/MCA/DigitisedBS/AR/2009

Government of India

Ministry of Corporate Affairs

5th Floor, "A" Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi – 110001

Dated: 28.07.2011

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

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

Sir,


The Para 3 of the Circular no. 37/2011 dated 07.06.2011 may be read as under: -

"All companies falling in Phase-I class of companies (excluding exempted class) are permitted to file their financial statements without any additional fee up to 30.11.2011 or within 60 days of their due date, whichever is later."

2. Further, in supersession of Para 2 (i) of Ministry's Circular No. 43/2011 dated 07.07.2011, it is informed that the verification and certification of the XBRL document of financial statements on the e-forms would continue to be done by authorized signatory of the company as well as professional like Chartered Accountant or Company Secretary or Cost Accountant in whole time practice.

3. This issue with approval of Competent Authority.

Yours faithfully,


(J.N. Tikku)
Joint Director





DRAFT NATIONAL COMPETITION POLICY

**MINISTRY OF CORPORATE AFFAIRS
Shastri Bhavan, New Delhi**

Ministry of Corporate Affairs, Government of India, New Delhi, invites Comments/Suggestions from the public and other Stakeholders including Government/State Governments on the draft "National Competition Policy" document available on Ministry of Corporate Affairs website www.mca.gov.in latest by 20th August, 2011.

The Comments/Suggestions may be sent to Shri Anil Kumar, Director, Ministry of Corporate Affairs, "A" Wing, 5th Floor, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi - 110001 or e-mail at dircs@mca.gov.in

davp 07101/11/0083/1112



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PROVIDING GIFTS TO THE SHAREHOLDERS DURING ANNUAL GENERAL MEETING (AGM) OF THE COMPANY

Draft Circular

F. No. 17/218/2011 CL.V
Government of India
Ministry of Corporate Affairs
CL V Section

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated July, 2011

All Regional Directors,
All Registrar of Companies,
All Stakeholders.

Sub: Providing Gifts to the shareholders during Annual General Meeting (AGM) of the Company.

Sir,

The Ministry of Corporate Affairs has been receiving representations from various stakeholders that it has become a general practice in the country to give gifts to the shareholders while they attend any AGM in addition to the dividend recommended by the Board of Directors.

2. It has also been brought to the notice of the Ministry that the companies offer gifts, extravagant food and other charms to shareholders who attend AGM to divert the attention of the shareholders from the main purpose of AGM and their right of key role in the management of the company through AGM. In addition, shareholders are made busy to collect gifts, gift coupons, packet of snacks etc., in the duration of meeting while corporate manage to pass certain resolutions without any debate on the same.

3. The Secretarial Standards on General Meeting issued by the Institute of Company Secretaries of India has also specifically mentioned that no gifts, gifts coupons or cash in lieu of gifts should be distributed to the members at or in connection with the meeting.

4. Keeping the principle of good corporate governance view, it has been decided that no company shall offer any other thing except tea, coffee, soft drinks and snacks etc in the AGM. As a courtesy to the shareholders, the same may be made available before the start of the meeting. Any other gifts, food coupons or gift coupons and other enticement shall be treated as misconduct on the part of board of directors of the company. The directors of such companies shall be liable to pay back the cost of such expenses to the company and shall also be liable for the penal action as provided under section 168 of the Companies Act, 1956 for not convening the AGM properly as required under section 166 of the Companies Act, 1956.



5. All the stakeholders are requested to consider and examine the above proposal of the Ministry and furnish their views /comments /recommendations to the Ministry by 14th August, 2011 on following e-mail addresses.

kamna.sharma@mca.gov.in
monika.gupta@mca.gov.in

Yours faithfully,

(Kamna Sharma)
Assistant Director

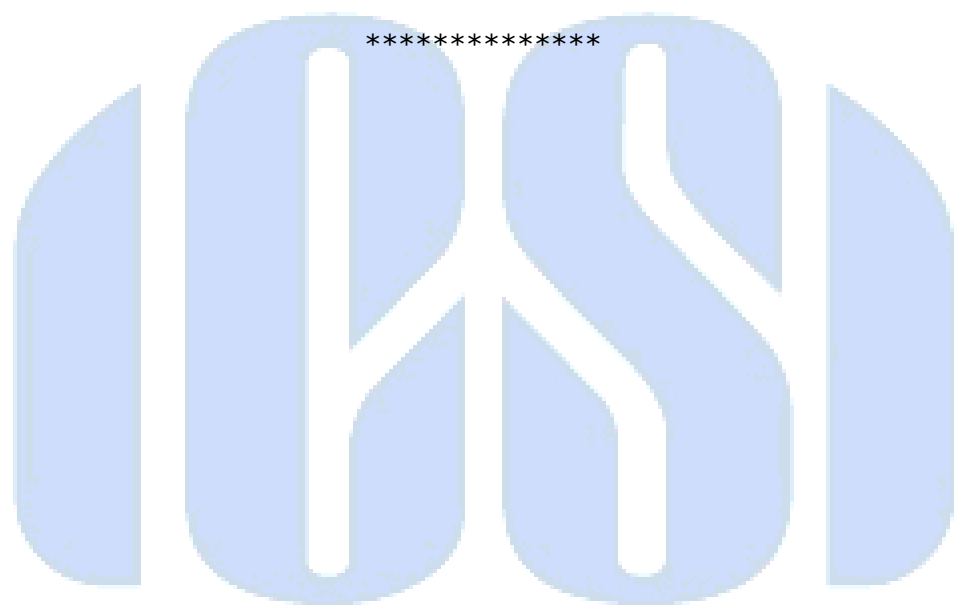
Copy to:

1. All concerned
2. PS to CAM and PS to MOS
3. PPS to Secretary, Additional Secretary, Joint Secretaries



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PRO-ACTIVE ACTION IN CASE OF WINDING UP PETITIONS

GENERAL CIRCULAR NO. 54/2011

F. No. 35/6/2011/Insolvency

Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110001
Dated 26th July 2011

To

All Regional Directors
All ROCs
All Official Liquidators

Subject: Pro-active action in case of winding up petitions.

It has been noticed that winding up petitions are filed by creditors, stake holders and management before Hon'ble High courts without providing full information. This leads to waste of valuable time of Hon'ble Court and also delays completion of winding up process as well. In order to speed up the winding up process and to introduce best international practices the winding up process, following actions will be taken by concerned OL:-

(a) OLs shall post one of the staff members to the Company Court to keep track of all cases where applications have been filed for winding up, but orders for winding up are yet to be issued by the Court.

(b) For all cases pending till date and in future as well, information shall be obtained by OL from "institution register" maintained in High Court and action as below must be taken in all cases.

(c) In each case the OL will file an application praying to the Court to direct the management of the company to submit following information duly verified by a chartered accountant:-

(i) The current addresses of the Directors, Company Secretary and Statutory Auditor of the company;

(ii) Location and physical details of each immovable asset of the company along with its current valuation;

(iii) The details of all the debtors and creditors with their complete addresses and occupations;

(iv) The details of each movable asset of the company along with value;

(v) The details of workmen/employees and any amount outstanding to them;

(vi) The details of all movable and immovable assets held in the personal names of director by providing its location, value, dates of acquisition and nature of right, title and interest therein;

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CS Update

August 10, 2011



(vii) Copies of last three years audited balance sheet of the company; and

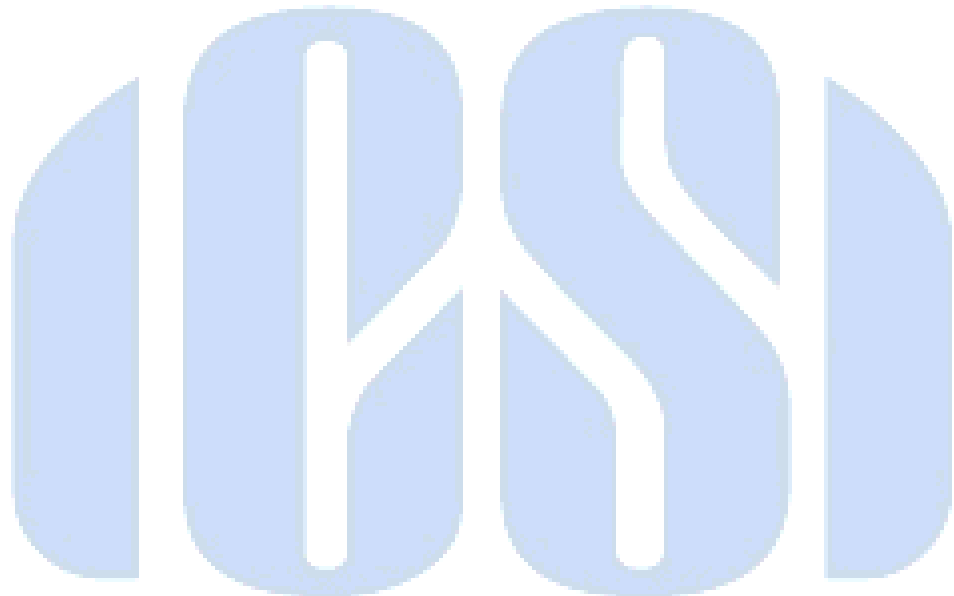
(viii) The details of location of the registered office of the company.

(d) RDs will ensure that in all pending cases, the applications are moved by OL before the Court before the next date of hearing and in all new cases, these are filed before the Hon'ble Court before the second hearing of the case.

(e) RDs will ensure that a standard draft is prepared by them after taking legal advice and the same is used in all cases by OLs.

(Jaikant Singh)

Director



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RBI UPDATE





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INVESTMENT IN THE UNITS OF DOMESTIC MUTUAL FUNDS

RBI/2011-12/148
A.P. (DIR Series) Circular No. 08

August 9, 2011

To,
All Category – I Authorized Dealer banks

Madam / Sir,

Investment in the units of Domestic Mutual funds

Attention of Authorized Dealers Category – I (AD Category - I) banks is invited to 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) and Non Resident Indian (NRI) may purchase, on repatriation basis, units of domestic Mutual Funds (MFs), subject to such terms and conditions mentioned therein and limits as prescribed for the same by the Reserve Bank and the Securities and Exchange Board of India (SEBI), from time to time.

2. It has now been decided, in consultation with the Government and the SEBI, to allow non- resident investors (other than SEBI registered FIIs and SEBI registered FVCIs) who meet the KYC requirements of SEBI, hereinafter called 'Qualified Foreign Investors' (QFIs), to purchase on repatriation basis rupee denominated units of equity schemes of domestic MFs issued by SEBI registered domestic MFs in accordance with the terms and conditions as stipulated by the SEBI and the RBI from time to time in this regard.

The QFIs may invest in rupee denominated units of equity schemes of domestic MFs issued by the SEBI registered domestic MFs under the two routes, namely:

1. Direct Route – SEBI registered Depository Participant (DP) route
2. Indirect Route - Unit Confirmation Receipt (UCR) route
3. These investments would be subject to the following terms and conditions:

General conditions

i) Investments by the QFIs would be subject to a ceiling of USD 10 billion under both the routes. For the purpose of this ceiling of USD 10 billion, total amount invested for the purchase of domestic MFs units by all QFIs and the money lying in the single rupee pool bank accounts of DPs would be added. SEBI will monitor the ceiling of USD 10 billion on daily basis through the concerned domestic MFs and DPs.



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ii) The investment under both the routes by the QFIs will be in the units which are directly issued by the domestic MFs and no secondary market purchases would be allowed.

iii) Only QFIs from jurisdictions which are compliant with the FATF standards and are signatories to the IOSCO's Multilateral Memorandum of Understanding will be eligible to invest in domestic MFs under this Scheme.

iv) DPs will ensure KYC of the QFIs as per the norms prescribed by SEBI.

v) Domestic MFs would also undertake KYC of the QFIs.

vi) Units and UCRs issued under this scheme to QFIs, would be non-tradable and non-transferable.

Direct Route

vii) The DP route will be operated through separate single rupee pool bank account to be maintained by the DP with a AD Category I Bank in India. The funds received from the QFIs into this account shall be remitted to the domestic MF either on the same day of the receipt of the funds from QFIs or by next business day in case money is received after business hours, failing which the funds would be immediately repatriated back to the QFI's overseas bank account. The redemption proceeds of the units will also be received from the domestic MF into this account and shall be repatriated to the overseas bank account of the QFI within two working days of the same having being received in the rupee pool account of the DP. Within these two working days the redemption proceeds can also be utilized for further investment by the QFI under this scheme. The foreign inward remittances in to the single rupee pool bank account of DPs shall be received only in permissible currency (i.e. freely convertible currency). **Dividend payments on units held by QFIs would have to be directly remitted to the overseas accounts of the QFIs by the domestic MFs and dividend payments to QFIs would not be allowed as an eligible credit to the single rupee pool bank account.**

viii) QFIs would be allowed to open a single demat account with a DP in India for investment in rupee denominated units of different domestic MFs equity schemes. However, the QFIs would not be allowed to open a bank account in India.

Indirect Route

ix) Domestic MFs would be allowed to open foreign currency accounts outside India for the limited purpose of receiving subscriptions from the QFIs as well as for redeeming the UCRs.

x) The UCR will be issued against units of domestic MF equity schemes.

4. It has also been decided to allow QFIs to invest (under both the routes – Direct and Indirect, subject to the terms and conditions mentioned in para 3 above) up to an additional amount of USD 3 billion in units of domestic MF debt schemes which invest in infrastructure ("Infrastructure" as defined under the extant ECB guidelines) debt of minimum residual maturity of 5 years, within the existing ceiling of USD 25 billion for FII investment in corporate bonds issued by infrastructure companies.



5. Investments by QFIs in units of domestic MFs, as above, shall also comply with the provisions of FEMA Notification 1 dated May 3, 2000, as amended from time to time.

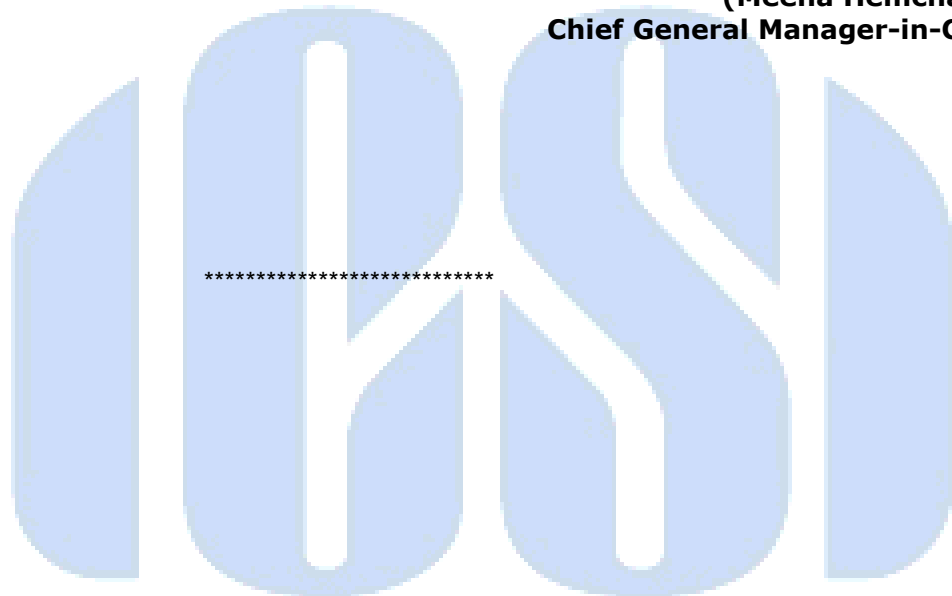
6. AD Category - I banks may bring the contents of the circular to the notice of their customers/constituents concerned.

7. 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) and Foreign Exchange Management (Deposit) Regulations, 2000 (Notification No. FEMA 5/2000-RB dated May 3, 2000) are being notified separately.

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

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge



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POLICY GUIDELINES FOR ISSUANCE AND OPERATION OF PREPAID PAYMENT INSTRUMENTS IN INDIA

RBI/2011-12/144
DPSS.CO.PD.No. 225/02.14.006/2011-12

August 04, 2011

To
All System Providers, System Participants
and all other prospective prepaid payment instrument issuers

Dear Sir,

Policy Guidelines for issuance and operation of Prepaid Payment Instruments in India.

A reference is invited to our [circular RBI/2010-11/261DPSS.CO.No. 1041/02.14.006/2010-2011 dated November 04, 2010](#), containing the guidelines for enabling additional category of prepaid payment instruments that could be issued by banks/NBFCs and non-banks.

2. It is advised that it has been decided to permit banks to issue prepaid payment instruments to corporates for onward issuance to their employees, subject to the following conditions:-

a. Prepaid payment instruments can be issued only to corporate entities listed in any of the stock exchanges in India;

b. Verification of the identity of the employee shall be the responsibility of the concerned corporate. The bank should put in place proper systems to capture and maintain details of the employees to whom the cards are issued by the corporate along with copies of photograph and identity proof of such employees. The corporate is also required to make available details of bank accounts (if any) of the employees to the bank;

c. Banks may ensure that the list of authorized signatories approved by the Board of the corporate entity is taken on record and requests from such authorized persons are only accepted for the purpose of loading/activating the prepaid payment instruments;

d. These prepaid payment instruments shall be loaded only by debit to the bank account, which are subject to full KYC, maintained by the corporate with the same bank. Reloading of these instruments shall also be carried out only by debit to this account;

e. The maximum value outstanding on individual prepaid payment instruments at any point of time shall not exceed Rs 50,000/-;

f. Banks shall facilitate transfer of funds from such prepaid payment instruments to a regular bank account of the concerned employee, if requested for;

CS Update

August 10, 2011



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g. The banks shall be responsible for all customer service aspects related to these instruments;

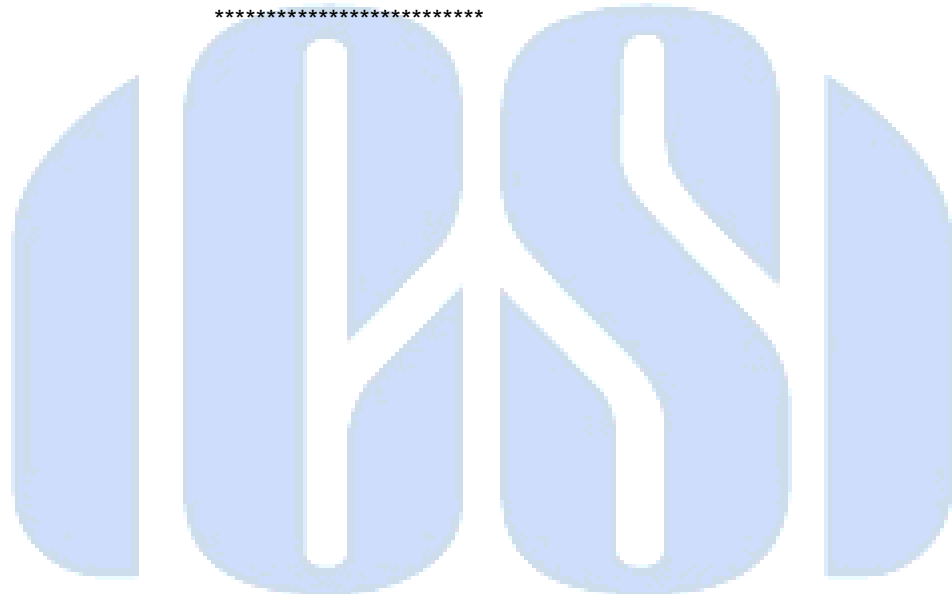
3. This directive is issued under section 18, of the Payment and Settlement Systems Act 2007, (Act 51 of 2007).

4. Please acknowledge receipt.

Yours faithfully

Vijay Chugh

Chief General Manager





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SUBSTITUTION OF TERM MICRO AND SMALL ENTERPRISES IN PLACE OF SSI IN THE DOCUMENTS

**RBI/2011-12/143
RPCD.SME & NFS. BC. No.14/06.02.31/ 2011-12**

August 3, 2011

The Chairman/Managing Director/Chief Executive Officer

All Scheduled Commercial Banks(*excluding Regional Rural Banks*)

Dear Sir

Substitution of term Micro and Small Enterprises in place of SSI in the documents

Copies of the [notification No.S.O.1642 \(E\) dated September 29, 2006](#) issued by the Ministry of Small Scale Industries and [S.O.563 \(E\) dated February 27, 2009](#) issued by Ministry of Commerce and Industry regarding substitution of term 'Micro and Small Enterprises' in place of the term 'Small Scale Industries' are enclosed. Kindly ensure that your internal guidelines / instructions are compliant with these notifications.

2. You are requested to issue suitable instructions to your branches / controlling offices.
3. Kindly acknowledge receipt.

Yours faithfully

(C.D.)
Chief General Manager

Srinivasan)

Encl: as above





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SEBI UPDATE





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INVESTMENT BY FOREIGN INVESTORS IN MUTUAL FUND SCHEMES

For detail, access at: <http://www.sebi.gov.in/circulars/2011/cirimddf14-2011.pdf>







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TAX LAW UPDATE





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'ON-SITE POST CLEARANCE AUDIT AT THE PREMISES OF IMPORTERS AND EXPORTERS REGULATIONS, 2011'

NOTICE

(To elicit response / Comments only)

DRAFT

'On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011'

F.No.450/1/2010-Dir (Cus)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
227-B, North Block,
New Delhi-110001

1st August, 2011.

CBEC has decided to introduce 'On-Site Post Clearance Audit' (OSPCA) in Customs. In this regard, suitable legislative amendments have been made in the Finance Act, 2011. The CBEC has framed draft 'On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011' on the manner of conduct of audit at the premises of importers and exporters.

2. CBEC solicits views, comments and suggestions on draft 'On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011' from the trade and industry associations, departmental officers and others. The views, comments and suggestions to the draft Regulations may please be sent, latest by **16th August, 2011**, to Director (Customs), Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, Room No.227-B, North Block, New Delhi - 110001 or at Fax No. (011) 23092173 or at e-mail I.D.: dircus@nic.in



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3. The draft 'On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011' have been put up only to elicit public response. No final decision has been taken as yet by the Government / Board, which will proceed further in the matter only after due examination of the response received.

Encl: Annexure.

(R. P. Singh)
Director (Customs)

To

All Concerned.

Annexure

DRAFT

On-Site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011

In exercise of the powers conferred by section 157, read with section 17, of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations namely:-

1. Short Title, extent and commencement.-

(1) These regulations may be called the 'On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011'.

(2) They shall apply to audit of assessment of duty relating to imported or export goods, as the case may be, at the premises of the importer or exporter, as the case may be.

(3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions- In these regulations, unless the context otherwise requires,-

(a) '**Auditor**' means an officer of customs who is assigned the function of audit by the Commissioner of Customs;

(b) '**Audit**' means examination of bills of entry, shipping bills, invoices, packing lists, import licences, books of account, and other records of transaction relating to imported and export goods, so as to check the accuracy and correctness of assessment of duty thereof and may include inspection of goods at the premises, if available;

(c) '**Books of Account**' includes ledgers, day-books, cash books, account-books and other accounts whether kept in the written or printed form and data stored on a floppy, disc, tape or any other form in electro-magnetic data storage device;

(d) '**Premises**' includes the place at which imported or export goods and connected books of account, records of transaction



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and other documents are ordinarily kept by an importer or exporter, as the case may be, and his registered office or the premises indicated in his Importer Exporter Code (IEC) issued by the Ministry of Commerce and Industry and the places wherever the imported or export goods, as the case may be, are ordinarily kept;

(e) Words and expressions used and not defined herein but defined in the Customs Act, 1962 shall have the same meaning respectively, assigned to them in the said Act.

3. Obligation of importers and exporters.-

(a) The importer or exporter, as the case may be, shall maintain such documents and records of transaction including electronic data relating to assessment of duty of imported or export goods, as the case may be, as prescribed by the Board for a period of five years from the date of import or export, as the case may be;

(b) The importer or exporter, as the case may be, shall make available in a timely manner such books of account, records of transaction and other relevant documents relating to imported or export goods, as the case may be, as required by the auditor;

(c) The importer or exporter, as the case may be, shall provide true and correct information to the auditor;

(d) The importer or exporter, as the case may be, shall render assistance to the auditor in the discharge of his official duty and shall in no case refuse or obstruct the auditor.

4. Manner of conducting audit.-

(a) The auditor shall, where considered necessary, obtain from the importer or exporter, as the case may be, prior information relating to imported or export goods, as the case may be, before conducting audit. The auditor may also take a tour of the premises to gather relevant information relating to imported or export goods, as the case may be;

(b) The auditor shall conduct the audit in the premises of the importer or exporter, as the case may be;

(c) The auditor shall inform the importer or exporter, as the case may be, of the objections, if any, before preparing the Draft Audit Report to provide an opportunity to offer clarifications with supporting documents in order to resolve potential disputes early and avoids unnecessary disputes;

(d) Where the importer or exporter as the case may be, is in agreement with the audit findings, in part or in full, he may make voluntary payments of duty due, if any, and the auditor shall take the same on record in the Audit Report;

(e) The auditor shall before finalizing the Audit Report discuss with the importer or exporter, as the case may be, steps, if any, to improve compliance;

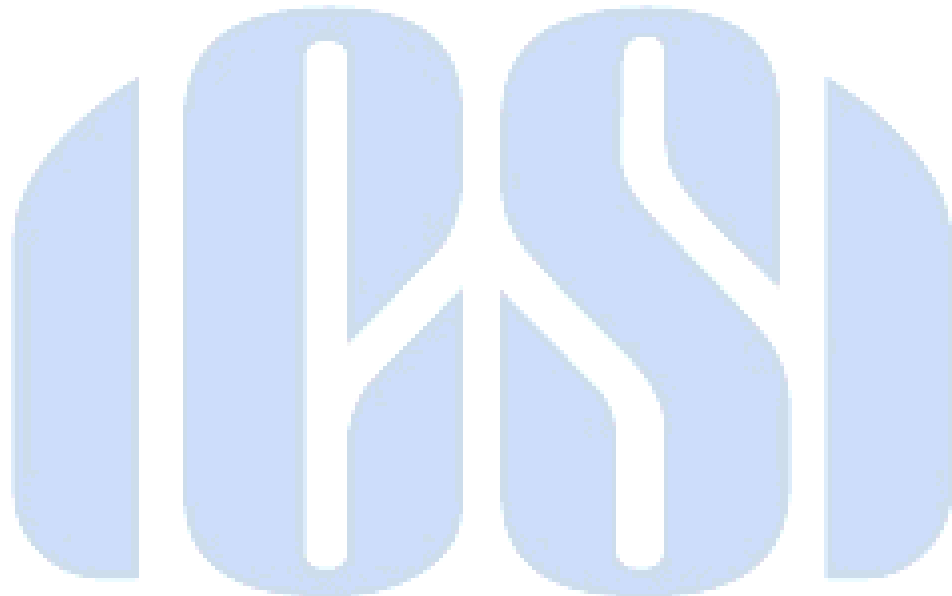




(f) In the course of audit, if found necessary, the auditor may inspect the imported or export goods, if available;

(g) The auditor may take samples of imported or export goods and copy of relevant documents to verify the correctness of assessment of duty.

5. Penal provisions.- An importer or exporter, who contravenes any provision of these Regulations or abets such contravention or fails to comply with any provisions of these Regulations with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees.



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