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## CS Update

August 26, 2011

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PREVIOUS ISSUES OF CS UPDATE ARE AVAILABLE AT THE FOLLOWING LINK:

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

**Disclaimer:** - Due care and diligence is taken in compilation of the CS Update. The Institute does not own the responsibility for any loss or damage resulting from any action taken on the basis of the contents of the CS Update. Anyone wishing to act on the basis of the contents of the CS Update is advised to do so after seeking proper professional advice.





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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, 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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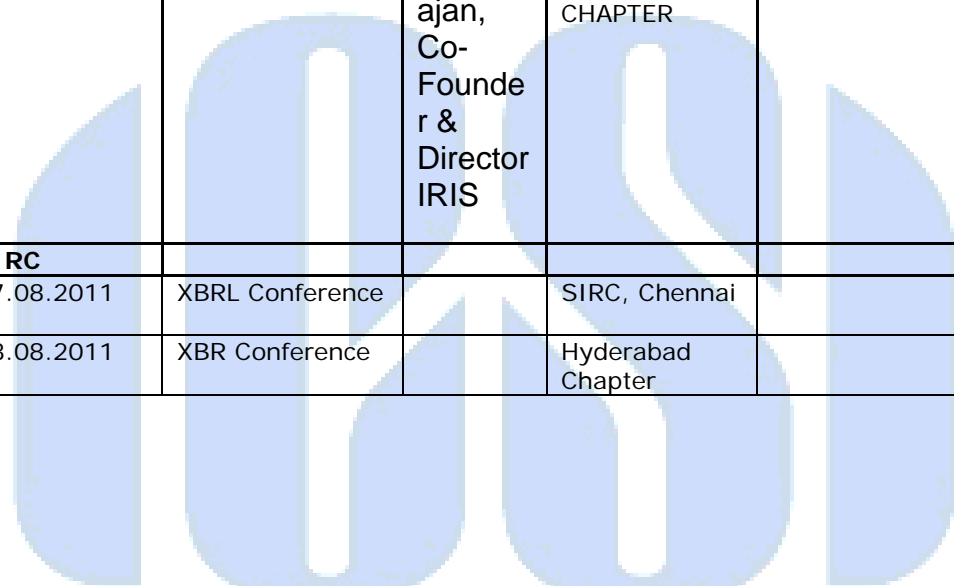






## FORTHCOMING PROGRAMMES ON XBRL

S.No	Date	Topics	Faculty	Organised by	Participating Chapters on live Webcast
	<b>NIRC</b>				
1	27.08.2011	Meeting on XBRL		NIRC	
2	28.08.2011	Meeting on XBRL		NIRC	
	<b>ICSI-CCGRT</b>				
3	27.08.2011	Filing, Demonstration and Reporting of XBRL	Ms. Deepa Rangarajan, Co-Founder & Director IRIS	ICSI-CCGRT JOINTLY WITH ICSI-COIMBATORE CHAPTER	
	<b>SIRC</b>				
4	27.08.2011	XBRL Conference		SIRC, Chennai	
5	28.08.2011	XBR Conference		Hyderabad Chapter	



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## Attention Members

### 11<sup>th</sup> ICSI National Award for Excellence in Corporate Governance, 2011

We are happy to inform you that the process of identifying the best governed corporates for the **11<sup>th</sup> ICSI National Award for Excellence in Corporate Governance** for the year 2011 has begun.

The First Questionnaire of the 11<sup>th</sup> ICSI National Award for Excellence in Corporate Governance is available on the ICSI website - [www.icsi.edu](http://www.icsi.edu) and can be downloaded from the website in word format.

**Please note as a part of the Green Initiative, the institute will not be sending a hard copy of the questionnaire.**

All listed entities and unlisted companies which send their nomination are eligible for the Award.

You are requested to participate/ encourage participation of companies that you are associated with, in order to make this endeavour of the Institute a grand success.

**The duly filled in Questionnaire may be sent in hard as well as in soft copy so as to reach the Institute on or before August 30, 2011.**

For further information you may contact Mrs. Alka Kapoor, Joint Director (Academics) at [alka.kapoor@icsi.edu](mailto:alka.kapoor@icsi.edu); Ph. -011-45341018.

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## 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](mailto: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.

– 27<sup>th</sup>- 28<sup>th</sup> 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





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## CORRIGENDUM TO COMPANY LAW SETTLEMENT SCHEME, 2011

**General Circular No. 60/2011**

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

5<sup>th</sup> Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi,  
Dated the 10<sup>th</sup> Aug, 2011

To

All Regional Director,  
All Registrars of Companies.

**Subject: Corrigendum to Company Law Settlement Scheme, 2011**

Sir,

In continuation of the Ministry's General Circular No. 59/2011 dated 5.8.2011 on the subject cited above, it is stated that the said scheme shall be applicable to Form 52 (filing of annual accounts by a foreign company) as foreign companies are included in the scheme.

2. All the terms and conditions of the General Circular No. 59/2011 dated 5.8.2011 will remain the same.

Yours faithfully,

-sd/-  
(Kamna Sharma)  
Assistant Director

Encl: As above



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

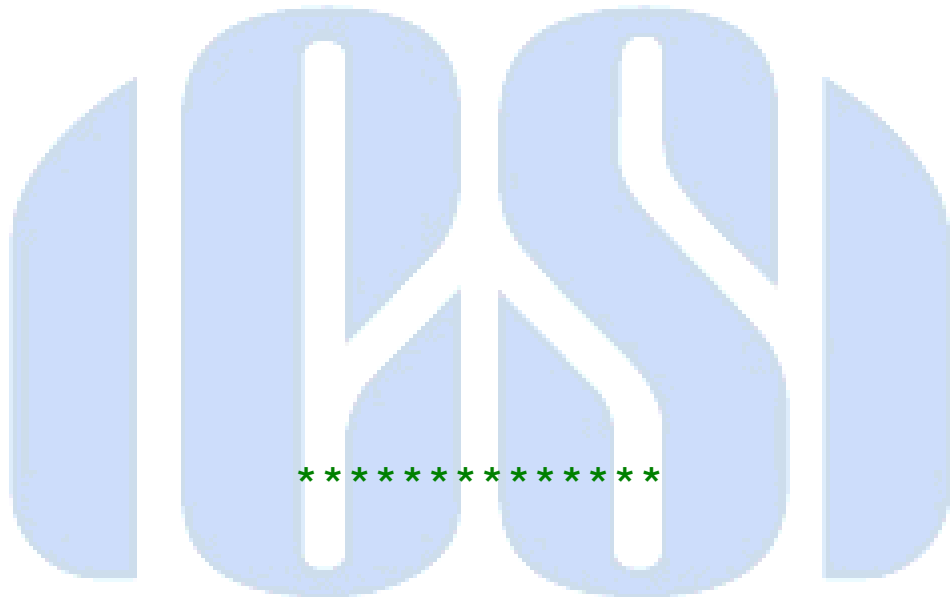
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**FOR DETAILS:**

[://www.mca.gov.in/Ministry/notification/pdf/GSR\(E\)\\_11aug2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/GSR(E)_11aug2011.pdf)

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## COMPANY LAW SETTLEMENT SCHEME, 2011

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### General Circular No.59 /2011

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

5<sup>th</sup> Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi,  
Dated the 05<sup>th</sup> 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 **12<sup>th</sup> Aug, 2011** and shall remain in force up to **31<sup>st</sup> 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 that reads 'Kamna Sharma'.

(Kamna Sharma)  
Assistant Director

Encl: As above





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## 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.

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 company, available with Registrar, the same should be cross checked with the Annual Report filed by the company;

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(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 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

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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

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

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."

- 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.
- This issue with approval of Competent Authority.

Yours faithfully,

A handwritten signature in black ink.  
(J.N. Tikku)  
Joint Director





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# SEBI UPDATE





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## REDRESSAL OF INVESTOR GRIEVANCES AGAINST STOCK BROKERS AND SUBBROKERS IN SEBI COMPLAINTS REDRESS SYSTEM (SCORES)

### CIRCULAR

CIR/MIRSD/18/2011  
2011

August 25,

#### All Recognized Stock Exchanges

Sir/Madam,

#### Sub: Redressal of investor grievances against stock brokers and subbrokers in SEBI Complaints Redress System (SCORES)

- SEBI has commenced processing of investor grievances in a centralized web-based complaints redressal system, 'SCORES'. The salient features of this system are:
  - Centralized database of all complaints;
  - Online movement of complaints to the concerned entities;
  - Online upload of Action Taken Reports (ATRs) by the concerned entities; and
  - Online tracking of status of complaints by investors.
- The investor grievances received by SEBI against stock brokers and subbrokers will be taken up electronically with the concerned stock exchange(s) through SCORES (<https://scores.gov.in/Admin>). The stock exchange(s) shall, in turn, take up the matter with the concerned stock brokers/subbrokers.
- The stock brokers and sub-brokers shall take adequate steps for redressal of grievances within one month from the date of receipt of the complaint and keep the investor/stock exchange(s) duly informed of the action taken thereon. Failure to comply with the said requirement will render the stock broker liable for penal action.
- The stock exchanges shall:
  - put in place a suitable mechanism to follow up with the stock brokers and sub-brokers, wherever necessary;
  - devise a system to levy penalty on its members for any noncompliance with the requirements specified in para 3 above;
  - update the status of the complaints in SCORES, at every stage, along with supporting documents; and
  - ensure that the status of investor complaints disclosed on their websites is in conformity with the status updated in SCORES.
- The stock exchanges are advised to:
  - issue necessary instructions to bring the provisions of this circular to the notice of their constituents and also disseminate the same on their websites;





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

c) communicate to SEBI, the status of the implementation of the provisions of this circular in the Monthly Development Report of the following month;

d) monitor the compliance of this circular through half-yearly internal audit and inspections of stock brokers; and

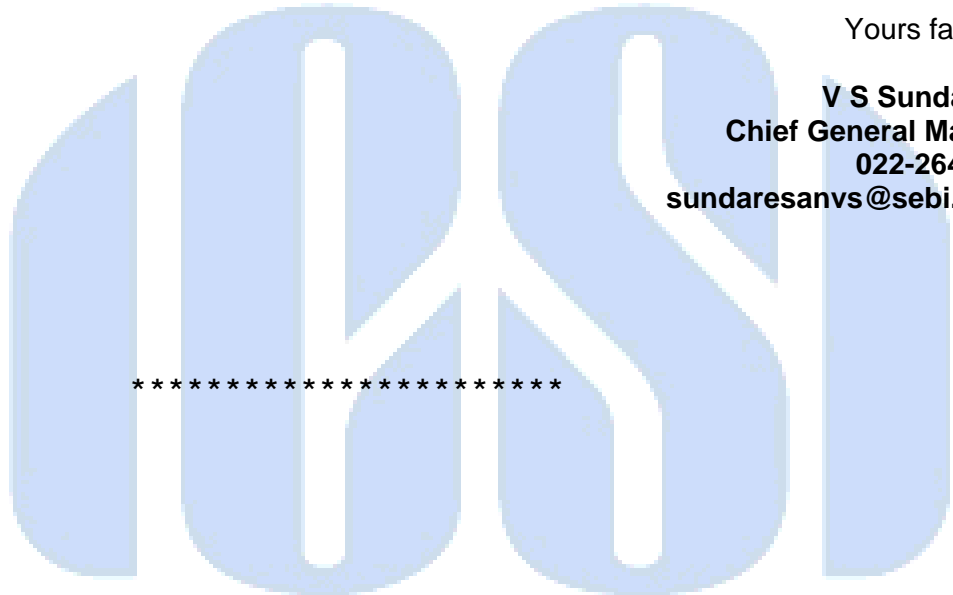
e) encourage investors to use SCORES for lodging their grievances.

6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect from the date of this circular.

7. This circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in) under the categories "Legal Framework" and "Circulars".

Yours faithfully,

**V S Sundaresan**  
Chief General Manager  
022-26449200  
[sundaresanvs@sebi.gov.in](mailto:sundaresanvs@sebi.gov.in)



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# RBI UPDATE





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## ISSUANCE OF NON-CONVERTIBLE DEBENTURES (NCDS)-MINIMUM RATING OF NCDS

RBI/2011-12/157

IDMD.PCD. 08/14.03.03/2011-12

August 23, 2011

### All Market Participants

Dear Sirs,

### Issuance of Non-Convertible Debentures (NCDs)-Minimum Rating of NCDs

A reference is invited to the Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010 dated [June 23, 2010 issued vide circular IDMD.DOD.10/11.01.01\(A\)/2009-10](#) of same date and the amendment Directions issued on [December 06, 2010 vide circular IDMD.PCD.24/14.03.03./2010-11](#) of same date covering the regulation of NCDs of maturity up to one year.

2. In view of the standardisation of rating symbols and definitions for credit rating agencies by Securities Exchange Board of India (SEBI), the Reserve Bank of India has issued an amendment Direction, i.e., **Issuance of Non-Convertible Debentures (Reserve Bank) (Amendment) Directions, 2011, inter alia, revising the symbol of minimum rating required for issuing NCDs of maturity up to one year.**

3. The amendment Directions comes into immediate effect. [A copy of the Directions is enclosed](#)

Yours faithfully,

(K. K. Vohra)  
Chief General Manager





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**RESERVE BANK OF INDIA  
INTERNAL DEBT MANAGEMENT DEPARTMENT  
CENTRAL OFFICE  
MUMBAI**

**Issuance of Non-Convertible Debentures (Reserve Bank)  
(Amendment) Directions, 2011**

IDMD.PCD.07/ED (RG) - 2011 dated August 23, 2011

In exercise of its powers conferred under sections 45K, 45L and 45W of the Reserve Bank of India Act, 1934 and of all the powers enabling it in this behalf, and in partial modification of the Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010 dated June 23, 2010, the Reserve Bank hereby notifies as follows: -

1. That the paragraph 4.2 of the Non-Convertible Debentures (Reserve Bank) Directions 2010 dated June 23, 2010 (hereinafter referred to as the 'said Directions') is hereby amended as under:

*4.2 The minimum credit rating shall be 'A2' [As per rating symbol and definition prescribed by Securities and Exchange Board of India (SEBI)].*

2. These Directions may be referred to as the Issuance of Non-Convertible Debentures (Reserve Bank) (Amendment) Directions, 2011 and shall be effective from today, i.e., August 23, 2011.

**(R. Gandhi)  
Executive Director**

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# TAX LAW UPDATE





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## **SECTION 200A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PROCESSING OF STATEMENT OF TAX DEDUCTED AT SOURCE - PROCEDURE FOR REGULATING REFUND OF EXCESS AMOUNT OF TDS DEDUCTED AND/OR PAID - MODIFICATION OF CIRCULAR NO. 2/2011, DATED 27-4-2011**

**CIRCULAR NO. 6/2011, DATED 24-8-2011**

In partial modification of Circular No. 2/2011, dated 27-4-2011, the following words are added at the end of paragraph 4.2 of the said circular.

"However, the refund claims pertaining to the period upto March 31, 2009 may be submitted to the Assessing Officer (TDS) upto 31-12-2012."

2. This issues with the approval of competent authority.

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

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

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

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

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

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

- (i) the actual payment made by the deductor to the credit of the Central Government; and
- (ii) the tax deductible at source.

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

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

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

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



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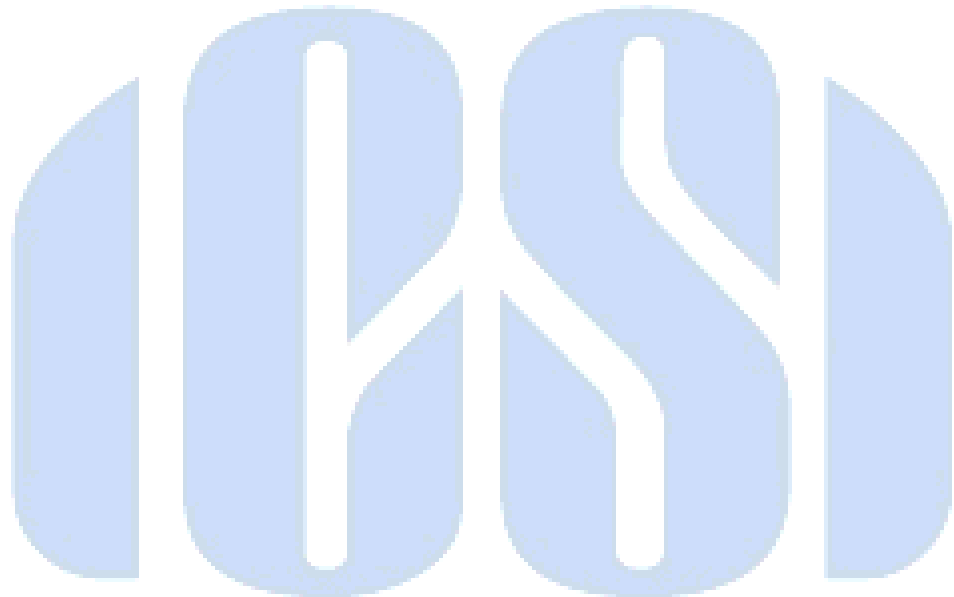


- (i) it is a case of genuine error and that the error had occurred inadvertently;
- (ii) that the TDS certificate for the refund amount requested has not been issued to the deductee(s); and
- (iii) that the credit for the excess amount has not been claimed by the deductee(s) in the return of income or the deductee(s) undertakes not to claim such credit.

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

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

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



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## CHAMBERS OF COMMERCE- SERVICE TAX ON FEE CHARGED FOR ISSUANCE OF COUNTRY OF ORIGIN CERTIFICATE (COOC)

Circular No. 145/14/ 2011 – ST

F.No.332/11/2011-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit

North Block, New Delhi  
19<sup>th</sup> August, 2011

To

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax),  
Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: - Chambers of Commerce- Service tax on fee charged for issuance of Country of Origin Certificate (COOC)- regarding.**

Board has received representations seeking clarification as to whether service tax is leviable on the fee charged by the Chambers of Commerce for issuance of COOC.

2. These representations have been examined. Service provided by a Chamber of Commerce by way of issuance of COOC appears to fall under two different headings, namely, 'club or association service' [Finance Act, 1994, section 65(105)(zzze)], or 'technical inspection or certification service' [Finance Act, 1994, section 65(105)(zzi)]. It is well known that in our country, Chambers of Commerce, Export Promotion Councils (EPC), some Trade Associations have been authorised by the Government to issue COOC to the exporters. General practice followed is that the exporter makes an application to the Chamber or any authorised agency for issuance of COOC, in the prescribed form, along with a copy of commercial invoice and other documents and pays the prescribed fees. On the basis and verification of the information provided in the application for COOC and the supporting documents with reference to the goods sought to be exported, the Chamber or the authorised agency issues a COOC.

3. The above activity carried out by the Chambers, involving certification of the national character of the export goods, squarely falls under 'technical inspection or certification', as defined in section 65(108) of Finance Act, 1994. In certain cases, when COOC is issued with reference to national character of the goods upon examination of the origin of their composition, requirements of the definition provided in section 65(108) of Finance Act, 1994 is clearly fulfilled. A chamber or EPC or Trade Association which issues COOC acts as a technical inspection and certification agency, and issuance of COOC attracts service tax under 'technical

# CS Update

August 26, 2011



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inspection and certification agency' service, which is a specific description when compared to a general description like 'club or association service', by the application of the principles of classification provided in section 65A of Finance Act, 1994.

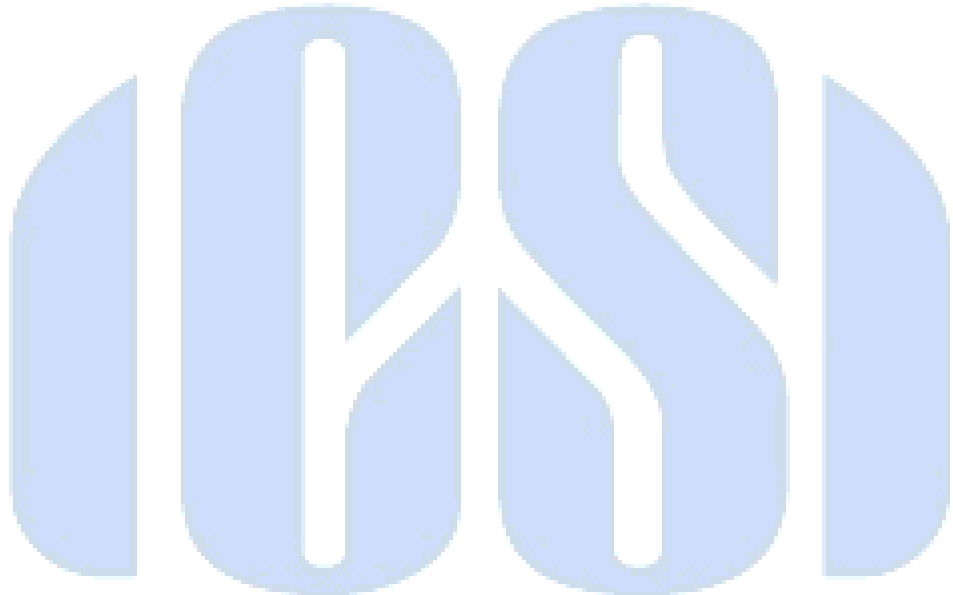
4. Service tax paid on 'technical inspection and certification' of export goods is eligible for refund under Notification 17/2009-ST dated 7<sup>th</sup> July, 2009.

5. Trade Notice/Public Notice may be issued to the field formations accordingly.

6. Please acknowledge the receipt of this circular. Hindi version to follow.

(Samar Nanda)  
Under Secretary, TRU

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## ISSUE OF CUSTOMS HOUSE AGENT LICENSE – REFERENCE FROM FIELD FORMATIONS

Circular No.38/2011-Customs

F.No.502/13/2011-Cus.VI  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

227-B, North Block,  
New Delhi-110001.

24<sup>th</sup> August, 2011.

To

All Chief Commissioners of Customs / Customs (Prev.).  
All Chief Commissioners of Customs & Central Excise.  
All Director Generals under CBEC.  
All Commissioners of Customs / Customs (Prev.).  
All Commissioners of Customs (Appeals).  
All Commissioners of Customs & Central Excise.  
All Commissioners of Customs & Central Excise (Appeals).

Subject: Issue of Customs House Agent License – Reference from field formations.

\*\*\*\*\*

Sir / Madam,

Attention is invited to Board's Circular No.9/2010-Customs dated 8.4.2010 which provides that persons qualified in written and oral examination held under Regulation 9 of the Customs House Agents Licensing Regulations (CHALR), 1984 but who were not granted Licence, are required to qualify in additional subjects to become eligible for grant of Licence under CHALR, 2004. Further, para 8.1 of the said Circular provides for one time opportunity to appear in examination for additional subjects to qualify them for grant of CHA Licence.

2.Representations have been received in the Board to grant reasonable opportunities to persons qualified under Regulation 9 of the erstwhile CHALR, 1984 but not granted CHA Licence at par with that currently available to applicants for passing examination under CHALR, 2004.

3. The matter has been examined in the Board. In this regard, it is felt that the intention of allowing these applicants to appear in the examination for additional subjects such as (a) The Patents Act, 1970 and Copyright Act; 1957 (b) Central Excise Act, 1944 (c) Export promotion schemes, (d) Procedure on appeal and revision petition, (e) Prevention of Corruption Act, 1988, (f) Online filing of electronic Customs declarations, (g) Narcotic Drugs and Psychotropic Substances Act, 1985 and (h) Foreign Exchange Management Act, 1999 was to ensure that they have working knowledge in these subjects as prescribed under CHALR, 2004. However, restriction on providing one time opportunity to qualify the examination for additional subjects for grant of CHA licence does not appear to be justified and needs re-consideration.

4.Accordingly, it has been decided by the Board that all such applicants who had already passed the examination held under regulation 9 of CHALR, 1984 but have



not been granted licence and are seeking qualification in additional subjects shall be allowed to clear the examination by **31.12.2012** irrespective of number of chances to become eligible for grant of CHA licence in terms of Regulation 9 of CHALR, 2004.

5. Board also desired that DGICCE will conduct necessary examinations expeditiously, after giving due notice to these candidates.

6. These instructions may be brought to the notice of the trade by issuing suitable Trade / Public Notices. Suitable Standing orders / instructions may be issued for the guidance of the field officers.

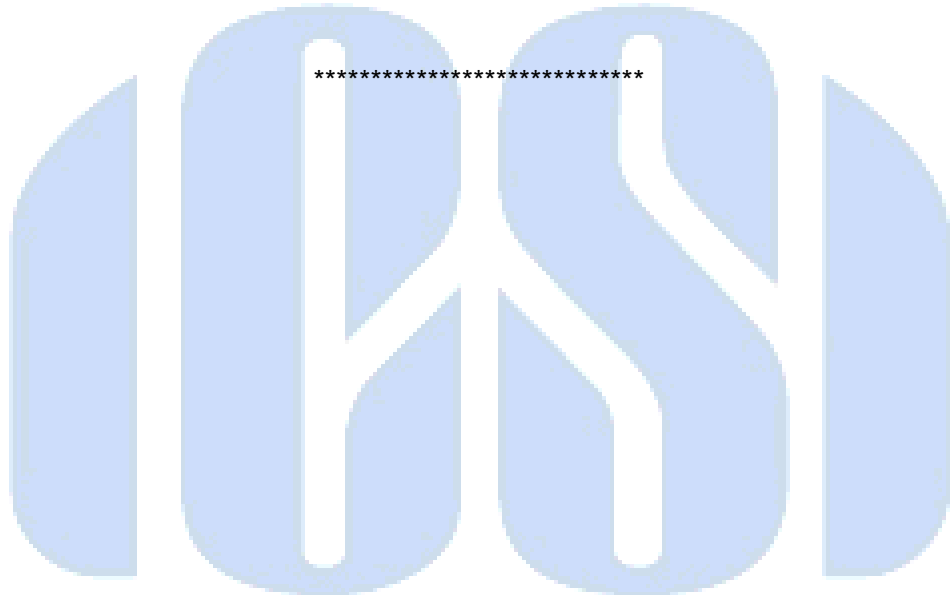
Yours faithfully,

( R. P. Singh )  
Director (Customs)

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## AUTHORIZED ECONOMIC OPERATOR (AEO) PROGRAMME FOR IMPLEMENTATION

Circular No.37/2011-Customs

F.No.450/179/2009-Cus.IV(Pt)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

227-B, North Block,  
New Delhi-110001.  
23<sup>rd</sup> August, 2011.

To

All Chief Commissioners of Customs / Customs (Prev.).  
All Chief Commissioners of Customs & Central Excise.  
All Commissioners of Customs / Customs (Prev.).  
All Commissioners of Customs & Central Excise.  
All Director Generals under CBEC.

**Subject: Authorized Economic Operator (AEO) programme for implementation.**

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Sir / Madam,

In view of growing concern amongst Customs administrations about the threat posed through misuse of channels of import and export, there is a need to ensure security in global supply chain in international movement of goods. Keeping this in view, CBEC has finalized the 'Authorized Economic Operators' (AEO) programme for implementation to secure supply chain of imported and export goods. This programme has been developed pursuant to guidelines of WCO adopted in SAFE FoS (Framework of Standard) in 2005. Many Customs administrations have already instituted AEO programmes or similar programmes which share a common objective of ensuring security in global supply chain from the point of origin i.e. the point of export to import in the receiving country, keeping in view national requirements of respective administrations. The detailed guidelines on implementation of the AEO programme are appended as ['Annexure'](#) to this Circular.

2. One of the salient features of the AEO programme is that any economic operator such as importer, exporter, logistics provider, Customs House Agent can apply for authorization subject to the criteria that the applicant is:

- (i) able to establish a record of compliance in respect of Customs and other legal provisions.
- (ii) able to demonstrate satisfactory systems of managing commercial and, where appropriate, transport records.
- (iii) financially solvent.
- (iv) able to demonstrate satisfactory systems in respect of security and safety standards.



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3.The AEO programme shall be implemented by the Directorate General of Inspection (DGICCE) and Additional Director General, DGICCE (HQ), New Delhi will be the AEO Programme Manager. The AEO Programme Manager shall be assisted by a team of officers viz. the AEO Programme Team.

4.The authorization shall normally be granted within 90 days of receipt of application if the same is found to be acceptable and not deficient in any material particulars. The programme also provides for circumstances under which the authorization may be considered for revocation or suspension.

5.The AEO Programme envisages various benefits to different categories of economic operators such as importers, exporters, Customs House Agents, etc. The intention is to give AEO certified operators preferential treatment in terms of less Customs examination, relaxed procedural requirements etc. This is subject to the authorized operators maintaining security standards and compliance requirements as detailed in Annexure and informing the AEO Programme Manager within 30 days in case of any significant change in business or business processes.

6.The AEO programme would be implemented on voluntary basis i.e. those who are interested in getting benefits of the programme may apply for authorization as per the procedure outlined in the Annexure. The authorization shall be granted after detailed pre-certification verification and validation done by AEO Programme Team.

7.As DGICCE is assigned the work of implementation of the AEO programme, Board desires that process of inviting application, processing of the same, validation and certification shall be done as envisaged in the programme, as per the following time lines:

Action	Timeline
Announcement of AEO programme	23.8.2011
Receipt of applications for pilots	By 15.9.2011
Scrutiny of applications for pilots	By 30.9.2011
Selection of 3 pilots and intimation thereof	By 15.10.2011
Validation process including field visits for pilots	15.10.2011 - 15.1.2012
Decision on grant of AEO status	15.2.2012

8.All Commissioners are requested to issue a suitable Public Notice and a standing order for guidance of trade and staff.

Yours faithfully,

(R. P. Singh )  
Director (Customs)

Click here for [Annexure](#)