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CS Update

November 4, 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>

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CAMPUS PLACEMENT AT KOLKATA ON 19TH NOVEMBER 2011

The ICSI is organizing a Campus Placement for the fresher members for job and for students for 15 Months Training on Saturday, the 19th November 2011 at 10.00 A.M. at ICSI-EIRC Building, 3-A, Ahiripukur 1st Lane, Kolkata-700019. Those Members who are admitted on or after 1st August 2011 and looking for job and students who have not commenced their training are eligible to participate for jobs and 15 months training respectively.

Members in employment and in practice may participate in the event as recruiters for selecting a member / AT for 15 months training. You may send query/request for participation on the email: sanjay.nagar@icsi.edu





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GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY THE PRACTISING COMPANY SECRETARIES

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REGD. NO. D. L.-33004/99



सं. 204]
No. 204]

नई दिल्ली, मंगलवार, अक्तूबर 18, 2011/आश्विन 26, 1933
NEW DELHI, TUESDAY, OCTOBER 18, 2011/ASVINA 26, 1933

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
In pursuit of Professional Excellence
"Statutory Body under an Act of Parliament"

NOTIFICATION

New Delhi, the 17th October, 2011

ICSI No. 1 of October, 2011.— The Council of the Institute of Company Secretaries of India pursuant to the Company Secretaries Act, 1980, as amended by the Company Secretaries (Amendment) Act, 2006 has issued the following Guidelines for Peer Review of Attestation Services by the Practising Company Secretaries, namely: -

1. Introduction

The Company Secretaries Act, 1980 (the Act) was enacted to make provision for the regulation and development of the profession of Company Secretaries, the Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members. The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain size of companies. Our members in practice are also being recognised for issuing certificates under various laws.

Excellence is the hallmark of success in a competitive environment. The performance can be judged and enhanced to that level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore, decided to introduce Peer Review for Practising Company



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Secretaries to periodically review the PCS firms and evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.

The Council of the Institute has been constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that "the duties of carrying out the provisions of this Act shall be vested in the Council" and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for Peer Review. These guidelines serve as a mechanism intended to further enhance the quality of professional work of Practising Company Secretaries over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

2. Objectives

2.1 The main objective of Peer Review is to ensure that in carrying out their attestation services and professional assignments, the PCS (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform. The Council has specified in these guidelines for Peer Review, the Technical Standards in relation to which peer review is to be carried out. Peer review does not seek to redefine the scope and authority of the Technical Standards specified by the Council but seeks to enforce them within the parameters prescribed by the Technical Standards.

2.2 Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable technical Standards.

2.3 These guidelines provide a framework of the Peer Review process and the requirements of what is expected of a member during the conduct of a peer review.

2.4 These guidelines may be called the "Guidelines for Peer Review of Attestation Services by Practising Company Secretaries".

2.5 These guidelines shall be applicable w.e.f. 1st October, 2011.

3 . Key Definitions - For the purpose of these guidelines,

3.1 *Attestation Services* - Means services involving the secretarial audit issuing of various certificates, but does not include:

- Management consulting Engagement;



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- Representing a client before the Authorities;
- Testifying as expert witness; and
- Providing expert opinion on points of principle, such as secretarial standards or the applicability of certain laws, on the basis of facts provided by the client,
- The phrase 'Attestation Services' is used in these guidelines interchangeably with secretarial or compliance audit Services, Attestation Functions and secretarial audit functions.

3.2 *Member* - Means a member of the Institute of Company Secretaries of India.

3.3 *Practice Unit* - Means members in practice, whether practicing individually or a firm of Company Secretaries.

3.4 *Peer Review* - Means an examination and review of the systems, procedures and practices to determine whether they have been put in place by the practice unit for ensuring the quality of attestation services as envisaged and implied/ mandated by the Technical Standards and whether these were effective or not during the period under review.

3.5 *Peer Review Board* - Means a Board established by the Council in terms of these Guidelines to conduct peer review. The expression "Peer Review Board" is hereinafter referred to as "Board".

3.6 *Regulator* - Means Government or any regulatory body constituted by the Parliament or State Legislature who is/are empowered to regulate the Acts which include various attestation services which the Council may, from time to time, prescribe to cover as attestation services for the purpose of peer review.

3.7 *Reviewer* - Means any member engaged to carry out peer review of practice unit from the panel of reviewers. –

3.8 *Technical Standards* - Mean and include:

- Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
- Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;
- Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India;
- Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
- Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.

3.9 *Qualified Assistant* - means a person assisting the reviewer for carrying out peer review, who is a member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of clause 15.1 of the Guidelines.



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3.10 Words and expressions used and not defined in these guidelines shall have the meanings assigned to them under the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 framed thereunder.

4. Authority of the Guidelines on Peer Review

4.1 The guidelines on Peer Review shall apply to all or any of the following cases :

- (a) *Whenever a peer review is mandated*
- (b) *Whenever a peer review is requested*
- (c) *Whenever peer review is conducted.*

4.2 The Guidelines on Peer Review are issued in relation to conduct of members in attestation services;

- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review: and
- to establish the expected conduct of members during a peer review.

5. Powers of the Council

- To constitute the Board and to fill in the vacancies arising in the Board from time to time.
- To decide upon, from time to time, the Technical Standards the implementation of which fall within the purview of the peer review process.
- To refer such matters to the Board as the Council may deem fit.

6. Peer Review Board

6.1 Establishment and Appointment

- (1) The Board shall be established by the Council.
- (2) The Board shall consist of a maximum of seven members to be appointed by the Council, of whom at least four shall be from amongst the Members of the Council.
- (3) The balance members of the Board shall be drawn from amongst prominent members of high integrity and reputation, including but not limited to former public officials, regulatory authorities etc.
- (4) The Council shall appoint the Chairman and the Vice-Chairman from amongst the Members of the Council.
- (5) At least one-half of Council Members on the Board shall hold Certificate of Practice.
- (6) The tenure of the Peer Review Board shall be co-terminus with the tenure of the Council and the term of a member shall be for such period as may be prescribed by the Council.
- (7) Any vacancy(ies) on the Board shall be filled in by the Council.
- (8) Members of the Disciplinary Committee of the Institute of Company Secretaries of India shall not concurrently serve on the Board.



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6.2 Meetings

- (1) No business shall be transacted at a meeting of the Board unless there are present at least three members, including the Chairman or in his absence, the Vice-Chairman,
- (2) If there is no quorum within half an hour of the time fixed for the meeting, the meeting shall stand adjourned to a date, time and place fixed by the Chairman or in his absence, the Vice-Chairman.
- (3) The Board shall meet not less than four times in a year.

6.3 Reporting

The Board shall submit proceedings of the meeting of the Board within 30 days from the date of the meeting to the Council.

7. Scope of Peer Review

7.1 The peer review process is directed at the attestation services of a practice unit.

- (1) Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review. Provided that the records of attestation services relating to years prior to the financial year beginning 1.04.2004 shall not be subjected to review.
- (2) The Review shall focus on:
 - (i) Compliance with Technical Standards.
 - (ii) Quality of Reporting.
 - (iii) Office systems and procedures with regard to compliance of attestation services systems and procedures.
 - (iv) Training Programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

8. Powers of the Board

8.1 The duty of carrying out the provisions of these guidelines shall be vested in the Board.

8.2 In particular, and without prejudice to the generality, of the foregoing powers, the duties of the Board shall include:

- (1) To call for information from practice units in such form as it deem fit.
- (2) To maintain a panel of Reviewers.
- (3) To define the terms of appointment of the reviewers.
- (4) To send a Panel of at least three reviewers (from the Board's own panel) to the practice unit and allow the practice unit to choose any one reviewer from the panel so forwarded to it: Provided that in case the practice unit would like to have reviewers from another State/Region (and undertakes to bear the extra costs that would be incurred for TA/DA etc.) and none of the reviewers as identified by the Board for the practice unit are from outside the place of business of the practice unit, then the practice unit may make a special request to the Board to provide names of reviewers from outside the State/Region where the practice unit has his place of business.



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- (5) To examine the aspects of basis of selection of records pertaining to the attestation services in terms of the appropriate Technical Standards.
- (6) To arrange for such training programs for reviewers as may be deemed appropriate;
- (7) To prescribe the system, practice and procedure to be observed in relation to peer reviews; and
- (8) On considering the Report of a reviewer, to do any or all of the following:
 - (a) To issue recommendations to the practice unit;
 - (b) To order a further peer review to be carried out;
- (9) After considering the report of the reviewer and compliance of recommendations by the Practice Unit, wherever deemed appropriate by the Board, to issue Peer Review Certificate.
- (10) To guide the members on best practices on peer review.

8.3 Where deemed appropriate, after the conclusion of a cycle of reviews or at the end of each such period as may be determined, the Board shall have the powers to make a Special Report to the Council on:

- (i) General issues regarding the level of implementation and adherence to Technical Standards amongst practice units.
- (ii) Its own suggestions for further improvement in quality of attestation services.

8.4 The Board may perform any other thing or act as may be incidental to, or which it considers necessary or expedient for the performance of its functions, or exercise of its powers as delegated to it by the Council, including the formation of subcommittees and regional benches of the Board for specific tasks.

9. Compliance with Peer Review Guidelines

9.1 Practice units are required to comply with the provisions of these guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in these regards from time to time, and as intimated to the members

10. Qualifications of the Reviewer

10.1 The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- (a) Be a member;
- (b) Possess at least ten years experience; and
- (c) Be currently in the practice as Company Secretary in Practice.

10.2 The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.



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11. Members/ Firms Subject to Review

11.1 Peer review will be implemented on the basis of random selections from the practice units or at the request of practice unit.

11.2 If company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.

11.3 If Council / Government or any regulatory body requests the Board for conduct of peer review of any Practice Units, the Board shall take due cognizance of such request and in that case the cost of peer review shall be borne by the referred practice unit.

11.4 The Peer Review Board may alter/change/modify the above method of selection with prior approval of the Council.

12. Obligations of the Practice Unit

12.1 Provisions of access to any record or document to a reviewer:

(1) Any person to whom this clause applies and who is reasonably believed by a reviewer to have in his possession or under his control any record or other document, which contains or is likely to contain information relevant to the peer review shall:

(i) Produce to the reviewer or afford him access to any record or document specified by the reviewer or any other record or document which is of a class or description so specified, and which is in his possession or under his control/being in either case a record or other document which the reviewer reasonably believes is or may be relevant to the peer review, within such time as the reviewer may reasonably require:

(ii) If so required by the reviewer, afford and provide to him such explanation or further particulars in respect of anything produced in compliance with a requirement under sub clause (i) above, as the reviewer shall specify; and

(iii) Provide to the reviewer all assistance in connection with peer review which he is expected to provide.

(2) Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part or it in a legible form, with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.

(3) The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.

(4) A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy there from which may be required by the reviewer.



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12.2 For the purpose of this clause a person means a Partner/ Sole Proprietor of the practice unit to which the particular review relates or any person employed by or whose services are engaged by such unit.

13. Periodicity of Peer Review

13.1 The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer reviews for a practice unit can be conducted at shorter intervals.

14. Cost of Peer Review

14.1 The cost of Peer Review for reviewer and his qualified assistant(s) as may be decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer has to conduct second review, the same rate would apply to the second review also. Each of the branch/ office under review would be considered separately.

15. Training and Development

15.1 To ensure that the objective of peer review is attained in letter and spirit, adequate training facilities shall be provided, from time to time, to the Reviewer(s) and other persons who assist the Board as and when and in the manner considered appropriate by the Board. Reviewers shall be expected to be fully familiar with all procedures, prescriptions, guidelines and other decisions as may be issued by the Board from time to time.

16. Review Framework

16.1 Essentially, a peer review entails a review of attestation engagement records and related financial/other statements to ascertain that the practice unit is adhering to Technical Standards. Where a practice unit is not following Technical Standards in certain situations, suggestions and recommendations for improvement may be made, and possibly followed by a further review, in keeping with the primary thrust of peer review.

16.2 The methodological approach involved in peer review can be defined in terms of three stages viz. planning, execution and reporting, which are summarized below;

(i) Planning

- **Intimation** - A practice unit will be intimated in writing about an impending peer review and will be sent a Questionnaire for completion together with a panel of three suggested names of reviewers. The practice unit will have to give its choice of reviewer within a period of 15 days from the day of receipt of the panel sent by the Board.
- **Return of completed Questionnaire** - The practice unit shall have to complete and return the Questionnaire to the reviewer within one month of receipt. The information will be used for the planning of the review. In addition, practice units will be required to enclose a



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complete list of their attestation services clients, and to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services engagements, representative of the practice unit's client portfolio, for review.

(ii) Sample of Attestation services Engagements

- (a) from the complete attestation services client list, an initial sample will be selected by the reviewer. Practice units will be intimated of the selection in writing about two weeks in advance, requesting the relevant records of the selected attestation services clients to be made available for review.
- (b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit's attestation services engagements, he may make further selections.

(iii) Confirmation of visit

In consultation with the practice unit date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that members are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within sixty days of intimation.

- (i) Peer review visits will be conducted at the practice unit's head office or other officially noted/recorded place of office. The complete on-site review of a practice unit may take at least a full day depending upon the size of the practice unit. This is based on the assumption that the practice unit concerned has made all the necessary information and documentation available to the reviewer for his review. However, in any case this on-site review should not extend beyond three working days.

(ii) Initial meeting

An initial meeting will be held between the reviewer and a partner/sole proprietor of the practice unit designated to deal with the review (designated partner). The primary purpose of this meeting is to confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information. The reviewer should have a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting.

(iii) Compliance Review-General Controls

- (a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be reviewed. The following five key controls will be considered as General Controls:



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- Independence
- Maintenance of Professional Skills and standards
- Outside Consultation
- Staff Supervision and Development
- Office Administration

Practice units are expected to address each of the five key control areas.

- (b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the kind of controls that are expected to be maintained, are installed and operated within practice units.
- (c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of the size and culture etc. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.

(iv) Selection of attestation services engagements to be reviewed

- (a) The number of attestation services engagements to be reviewed depends upon:
 - The number of practicing members involved in attestation services engagements in the practice unit;
 - The degree of reliance placed, if any, on general quality controls; and
 - The total number of attestation services engagements undertaken by the practice units for the period under review.
- (b) The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit's attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services client list.

(v) Review of records

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

- (a) Compliance approach-Attestation services Engagements
 - The compliance approach is to assess whether proper control procedures have been established by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards.
 - Practice units should have procedures and documentation sufficient to cover each of the key areas. Members in smaller practices may find some of the documentation too elaborate for most of their clients and so should tailor their attestation services documentation to suit their particular circumstances with justification for doing so provided to the reviewer.
- (b) Substantive approach-Attestation services Engagements



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A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's specific controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory. This approach requires a review of the attestation working papers in order, to establish whether the attestation work has been carried out as per norms of Technical Standards.

16.3 Reporting

(i) Preliminary Report of Reviewer

- At the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.
- The reviewer shall not name any individual in his reports.
- The practice unit shall have 21 days beginning the day after the day the preliminary report is received, by the practice unit from the reviewer to make any submissions or representations, in writing to the reviewer, concerning the preliminary report.

(ii) Interim Report of Reviewer

- (a) If the reviewer is satisfied with the reply received from the practice unit, he shall submit an appropriate Report to the Board. In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall accordingly submit his Interim Report to the Board.
- (b) In pursuance of the provisions contained in the above clause or on receipt of a request from the practice unit, the Board may instruct the reviewer to - again carry out the review after six months to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.
- (c) On receiving a report from a reviewer in terms of these, the Board, having regard to the Report and any submissions or representations attached to it, may:
 - make recommendations to the practice unit concerned regarding the application by it of Technical Standards;
 - if it is of the opinion that
 - (1) In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;
 - (2) In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;
Then;
 - (3) Issue instructions to the reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further peer review as regards the practice unit to which the report relates; and
 - (4) Specify in the instruction, the matters as regards which the review is to be carried out;



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(d) The Board will make recommendations to the practice unit where:

Based on the report of the reviewer, it appears that the practice unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and

Based on the report of the reviewer, it appears that the practice unit has satisfied the major key control objectives but some weaknesses exist in others. The practice unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

(e) A follow up review will be required where the practice unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the practice unit. In such cases the Board will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

(f) In case the reviewer is not satisfied even at the subsequent review, he shall submit his Report to the Board incorporating his reasons for dissatisfaction.

(iii) final Report of Reviewer

(a) The reviewer will prepare a final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed practice unit. The model forms of such final Reports shall be communicated to the reviewer by the Board.

(b) The Board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the Board may issue recommendations, if considered appropriate, to the practice unit and/or instruct the Reviewer to perform any follow-up action. The Board may, if deemed fit, then issue Peer Review Certificate to the practice unit.

(iv) The reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him or by a partner or an employee of his firm.

17. Referral of Disputes and Appeal

17.1 Where a dispute arises over the powers of reviewers or the process or conclusions reached after the review or to any other matter related to the review, the practice unit, the reviewer or both may refer the dispute, in writing, to the Board. Such referral shall have to be made within two



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months in such manner as may be prescribed by the Board in these regards.

17.2 Where a dispute is referred, after considering any submissions or representations (which shall be made in writing) made by the relevant practice unit and/or the relevant reviewer, the Board-

- Shall decide the dispute within six months and communicate such decision to each of the parties to the dispute;
- May issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them;
- Shall convey its decision in these regards to the appellant within 15 days from the date of the decision, so as to provide the appellant sufficient time to respond.

17.3 Where a practice unit is dissatisfied with the decision of the Board, it may refer the matter to the Council within two months in such manner as may be prescribed.

18. Immunity

18.1 A practice unit, which makes available records or documents to a reviewer, shall not incur any liability under the Code of Conduct under the Company Secretaries Act, 1980 and the Regulations framed thereunder, by reason of compliance with these Guidelines on Peer Review .

18.2 The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

18.3 The members of the Peer Review Board shall not incur any liability by virtue of their having discharged the responsibilities as given in these Guidelines and/or as may in future be specified by the Council, other than the liability arising out of their own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

19. Confidentiality

19.1 Strict confidentiality provisions shall apply to all those involved in the peer review process, namely, reviewers, members of the Board, the Council, or any person who assists any of these parties.

19.2 Those persons subject to the secrecy provision:

(1) Shall at all times after his/ their appointment preserve and aid-in preserving secrecy with regard to any matter coming to his/ their knowledge in the performance or in assisting in the performance of any function, directly or indirectly related to the process and conduct of peer review.

(2) Shall not at any time communicate any such matter to any other person; and

(3) Shall not at any time permit any other person to have any access to any record, document or any other material if any form which is in his/their possession or under his/their control by virtue of his/their being or having been so appointed or his/their having performed or having assisted any other person in the performance of such a function.



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19.3 Non-compliance with the secrecy provisions in the above clause shall amount to professional misconduct as defined under Section 22 of the Company Secretaries Act, 1980.

19.4 A statement of confidentiality (appended as Annexure 'A') shall be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers/ the members of the Board and others who assist them.

20. Procedural Departures

20.1 Where the persons who are responsible for the conduct of peer review (reviewers, the members of the Board and others who assist them) have not followed the prescribed procedures, they shall have to justify significant departures and such justification shall have to be mandatorily made known to the Council in the periodic Reports of the Board to the Council.

Annexure 'A'

Statement of Confidentiality

[In accordance with the Guidelines on Peer Reviews this statement of confidentiality is to be filled in by the persons who are responsible for the conduct of peer review i.e. reviewers, members of the Board and others who assist them, individually. The Reviewer shall be responsible for taking this undertaking from all those persons who assist him or are likely to assist him in conducting peer reviews, and shall send the same to the Board. This statement of Confidentiality should be renewed every year.]

To
The Chairman,
Peer Review Board,
The Institute of Company Secretaries of India
Sir,

I hereby declare that my attention has been drawn to the need for confidentiality in the conduct of peer reviews. I therefore undertake and assure that in so far as any or all of the following relate to me or are brought to my knowledge/attention, in any manner whatsoever, whensoever, I will ensure that on my part

- Working papers shall always be kept securely so that unauthorised access is not gained by anyone.
- The practice unit's attestation services procedures shall not be disclosed to third parties.
- Any information with regard to any matter coming to my knowledge in the performance or in assisting in the performance of any function during the conduct of peer reviews shall not be disclosed to any person.

Access to any record, document or any other material, in any form which is in my possession, or under my control, by virtue of my being or having been so appointed or my having performed or having assisted any other person in the performance of such a function, shall not at any time be permitted to any other person.



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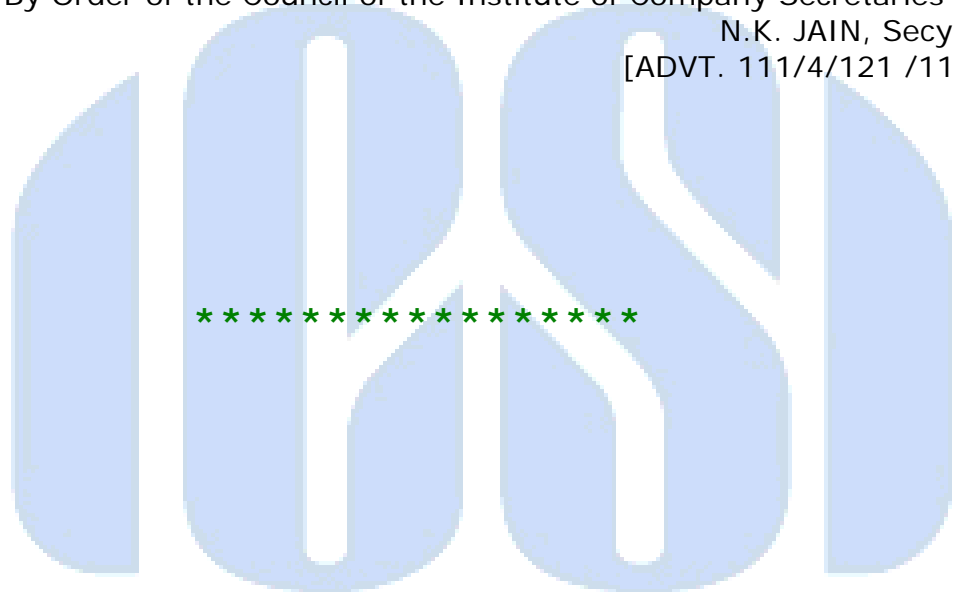
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I understand that any breach of the provisions regarding confidential information contained in the Guidelines on Peer Review will be considered as gross negligence and, subject to investigation, will result in appropriate action.

Signature:
Name:
Designation:
Date:
Place:
Taken on record on (date)
By
Signature:
Name:
Designation:

By Order of the Council of the Institute of Company Secretaries of India
N.K. JAIN, Secy. & CEO
[ADVT. 111/4/121 /11 /Exty.]





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MEMORANDUM OF UNDERSTANDING WITH MAICSA

A Memorandum of Understanding was entered into between the MALAYSIAN INSTITUTE OF CHARTERED SECRETARIES AND ADMINISTRATOR (MAICSA) and THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (ICSI) at the 39th National Convention of Company Secretaries at Agra on October 14, 2011.

The important highlights of the MOU are:

- It will help students and members of both institutes to –
 - Attend training programmes organized by other Institutes.
 - Visit offices and work places of members of other Institutes.
 - Attend organized visits to professional places of interest e.g. companies, stock exchanges, securities commissions.
- Both Institutes also agree to –
 - Exchange course materials, case studies, research publications.
 - Undertake joint research projects which are mutually beneficial.

The MOU is available at the following link :

<http://www.icsi.edu/WebModules/LinksOfWeeks/MAICSA.pdf>



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6th INTERNATIONAL PROFESSIONAL DEVELOPMENT FELLOWSHIP PROGRAMME-2011

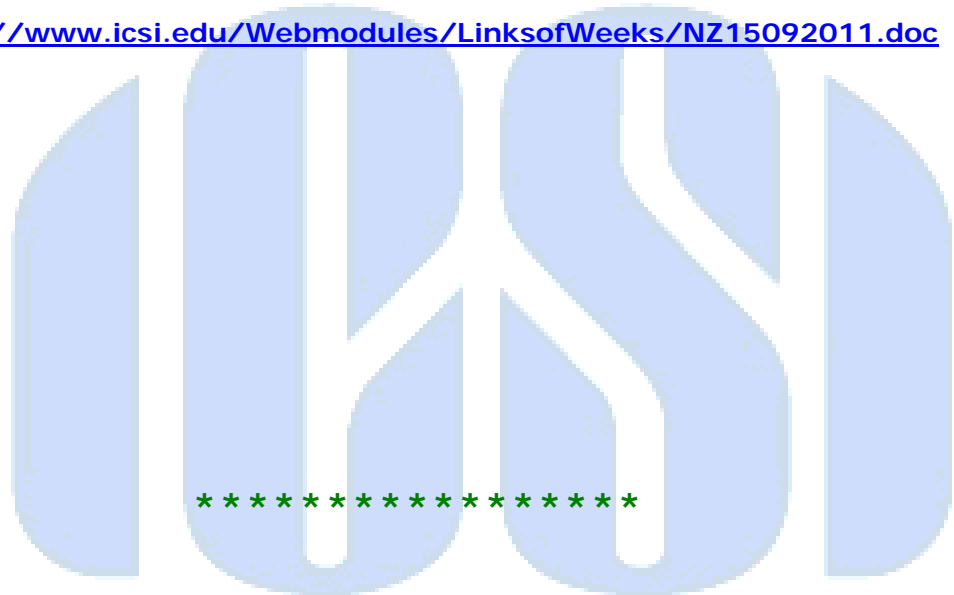
Details can be accessed at:

For AUSTRALIA (18TH -27TH NOVEMBER 2011)

<http://www.icsi.edu/Webmodules/LinksofWeeks/6InFellowship.doc>

For Optional Tour to Newzeland thereafter (27th - 2nd December, 2011)

<http://www.icsi.edu/Webmodules/LinksofWeeks/NZ15092011.doc>





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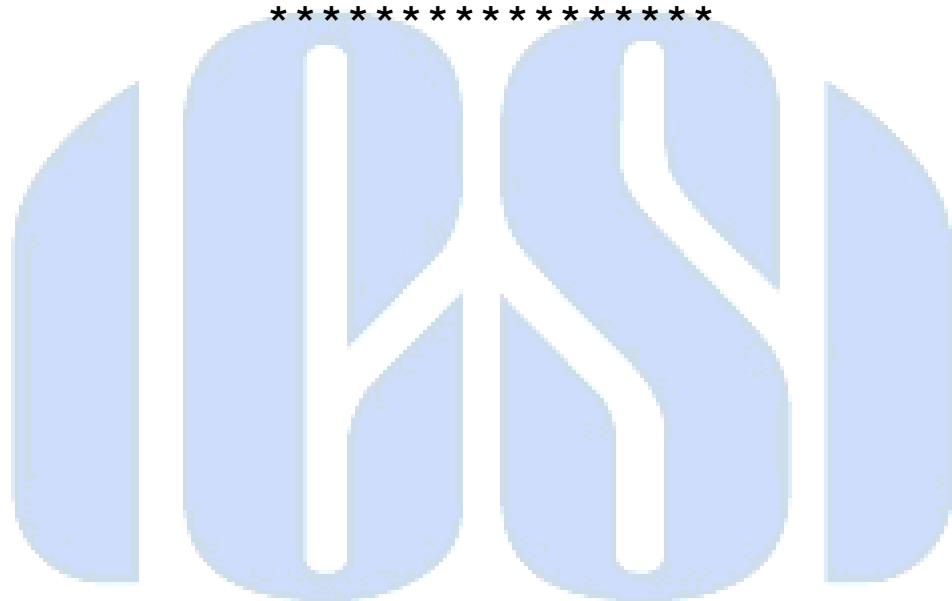
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RE-OPENING THE REGISTRATION PROCESS OF CERTIFIED FACILITATION CENTERS

Details can be accessed at:

<http://www.icsi.edu:8888/cfc/cfc.aspx>





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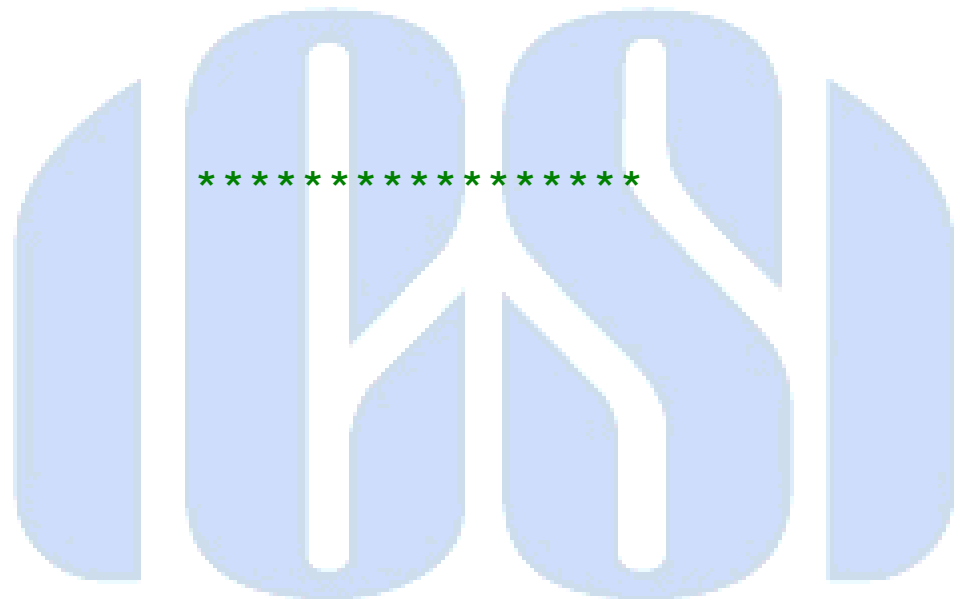
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RECORDING OF WEBCAST ON XBRL ARRANGED BY ICSI

Details can be accessed at:

<http://www.streamonweb.com/ICSI/archivals>





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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. FRC announces changes to UK Corporate Governance Code --- 11 October 2011

On the basis of responses to the views sought by The Financial Reporting Council (FRC) on whether the UK Corporate Governance Code should be revised as recommended by Lord Davies of Abersoch in his review of the gender diversity of the boards of UK-listed companies published in February 2011, FRC has announced its decision to amend the UK Corporate Governance Code to strengthen the principle on boardroom diversity which was first introduced into the Code in June 2010.

These amendments will require listed companies to report annually on their boardroom diversity policy, including gender, and on any measurable objectives that the board has set for implementing the policy and the progress it had made in achieving the objectives. The FRC will also update the Code to include the diversity of the board, including gender, as one of the factors to be considered when evaluating its effectiveness.

The current revised Code, which came into effect in June 2010, included for the first time a principle recognising the value of diversity in the boardroom, which states that, "The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and will due regard for the benefits of diversity on the board, including gender".

The new provisions on diversity will apply to financial years beginning on or after 1 October 2012. However, the FRC strongly encourages all companies voluntarily to apply and report on the diversity additions to the code with immediate effect.

Detailed code can be accessed at:
<http://www.frc.org.uk/>

2. Global Reporting Initiative (GRI) – G4 Guidelines

The Global Reporting Initiative (GRI) drives sustainability reporting by all organizations. GRI produces a comprehensive Sustainability Reporting Framework that is widely used around the world to enable greater organizational transparency. The Framework, including the Reporting Guidelines, sets out the Principles and Indicators that organizations can use to measure and report their economic, environmental, and social performance. GRI is committed to continuously improving and increasing the use of the Guidelines, which are freely available to the public.

The launch of the fourth generation of GRI's Guidelines – G4 – is planned for 2013. The G4 Guidelines will be developed using the international multi-stakeholder consultation.



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These guidelines are expected to address requirements for sustainability data, and enable reporters to provide relevant information to various stakeholder groups. It is also expected to improve on content in the current Guidelines – G3 and G3.1 – with strengthened technical definitions and improved clarity, helping reporters, information users and assurance providers.

Earlier this year, GRI invited the public to submit suggestions to a 'Call for sustainability reporting topics.' GRI had gone through these perspectives and designed a new online survey for broader public consultation.

The first Public Comment Period for G4 Survey is now open.

Public comment helps ensure that GRI's Guidelines are consensus-based and reflect the broadest possible stakeholder input. The first G4 Public Comment Period is an online survey. It runs for 90 days and closes on 24 November 2011.

The survey seeks crucial feedback on issues like:

- the principal reasons for sustainability reporting
- report formats
- the minimum content of a GRI sustainability report
- report topics – including views on the proposals from the public 'Call for sustainability reporting topics' in May
- general experiences with sustainability reporting

Open Public Comment Periods, diverse expert Working Groups and GRI's approval procedures will ensure that G4's guidance is consensus-based and reflects the broadest possible stakeholder input.

The **details** can be accessed at:

<http://www.globalreporting.org/CurrentPriorities/G4Developments/GetInvolved/GetInvolved.htm>

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GREEN IDEA

Planting a Tree Few Benefits



100% Pure Air.

New improved climate.

Absorbs pollution.

Creates a space in concrete jungle for green rest.

Something Good:

Plastic Ban -- In a major environment-friendly move, the Delhi government will impose a blanket ban on usage and manufacturing of plastic bags in the next two months and those violating it could face imprisonment up to five years and fine of up to Rs 1 lakh or both. The ban is being imposed under the Environment (Protection) Act, 1986 under which storage as well as sale of plastic bags will also be considered an offence.



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The government has issued a draft notification seeking suggestions as well as objections, if any, to the move from the stakeholders till November 20, 2011 following which a final notification will be issued imposing the ban.

According to the draft notification, no person including shopkeepers, vendors, wholesalers, retailers and hawkers will be allowed to sell, store or use plastic carry bags for supply of any goods.

To Remember:

- November 1- World Vegan Day
- November 16- International Day for Tolerance
- November 20- Universal Children's Day
- November 25- International Day for the Elimination of Violence against Women

Quote of the Month

"Be a yardstick of quality. Some people aren't used to an environment where excellence is expected."

Steve Jobs

Forthcoming Events

Asian Corporate Governance Forum --- ACGA will hold its 11th Annual Conference, the "Asian Business Dialogue on Corporate Governance 2011", at the Grand Hyatt Shenzhen, China on November 1-2, 2011

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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COMPANIES (DEMATERIALIZATION OF CERTIFICATES) RULES, 2011

No 17/143/2011-CL.V
Government of India
Ministry of Corporate Affairs

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

Dated: 28.10.2011

All the Regional Directors,
All the Registrar of Companies
All stakeholders

Subject : Companies (Dematerialization of Certificates) Rules, 2011

Sir,

The Ministry of Corporate Affairs was considering the proposal to issue Companies (Dematerialization of Certificates) Rules, 2011 and comments /Recommendations were invited by the Ministry latest by 30th June, 2011 vide letter of even number dated 06.06.2011.

The matter was examined by this Ministry in consultation of Law Ministry and it has been decided to withdrawal of draft of Dematerialization of Certificates Rules, 2011.

Yours faithfully,


(J.N. Tikku)
Joint Director

Copy to:-

E-Governance Cell: - with a request to place the aforesaid letter in the website of MCA.



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REGISTRATION OF COMPANIES AND LLPS WITH OBJECTIVE TO DO BUSINESS OF ARCHITECT

No. 17/165/2011-CL-V (Pt.)
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi
Dated: 10.10.2011.

To
All the Regional Directors,
All the Registrar of Companies/Registrar of LLPs

Subject:- Registration of Companies or LLPs which have one of their objectives to do business of architect


Sir,

I am directed to say that a number of representations have been received in the Ministry to the effect that the Registrar of Companies and the Registrar of LLPs are incorporating the companies and LLPs in contravention to the provisions of the Architect Act, 1972 that the Council of Architect (CoA). In terms of Sections 36 and 37 of the Architects Act, 1972 as well as Rules and Regulations framed thereunder only an architect registered with the Council of Architecture or a firm of Architects (a partnership firm under the Partnership Act, 1932, comprising of all registered architects) can represent itself as an architect or use the title and style of architect of practicing the profession of an Architect in India with the exception of a landscape architect and naval architect. The matter is under examination in consultation with the Department of Legal Affairs.

Pending finalization of view of the Central Government on the subject it is hereby directed incorporation of companies/LLPs where one of the objects of such entities is to carry on the business of architect be not proceeded with till further order.

This issues with the approval of CAM

Yours faithfully,


(Seema Rath) 10/10/2011
Assistant Director



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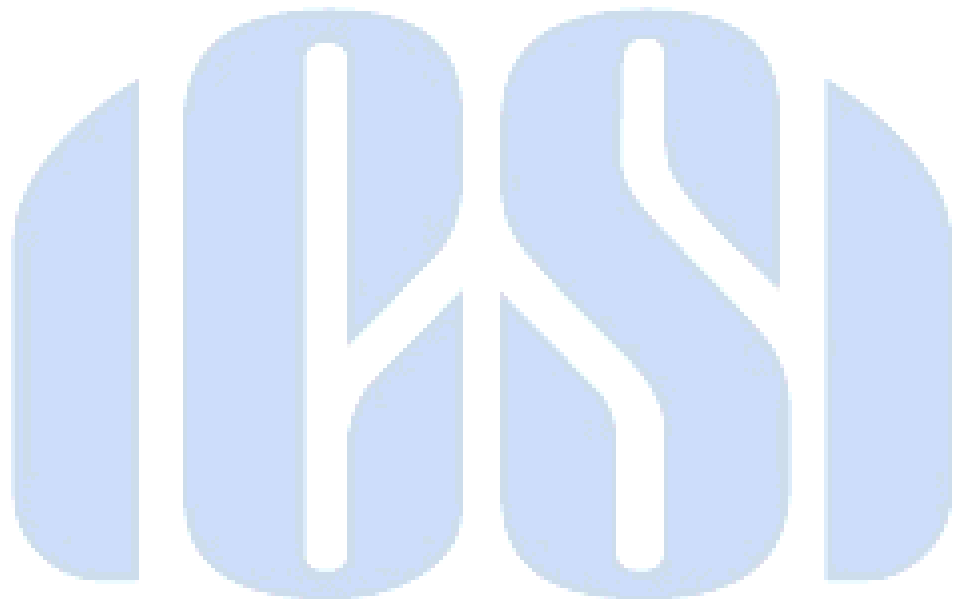
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THE COMPANIES (CENTRAL GOVERNMENT'S) GENERAL RULES AND FORMS (AMENDMENT) RULES, 2011

Details can be accessed at:

http://mca.gov.in/Ministry/notification/pdf/notification_23AC_23ACA_XBRL.pdf





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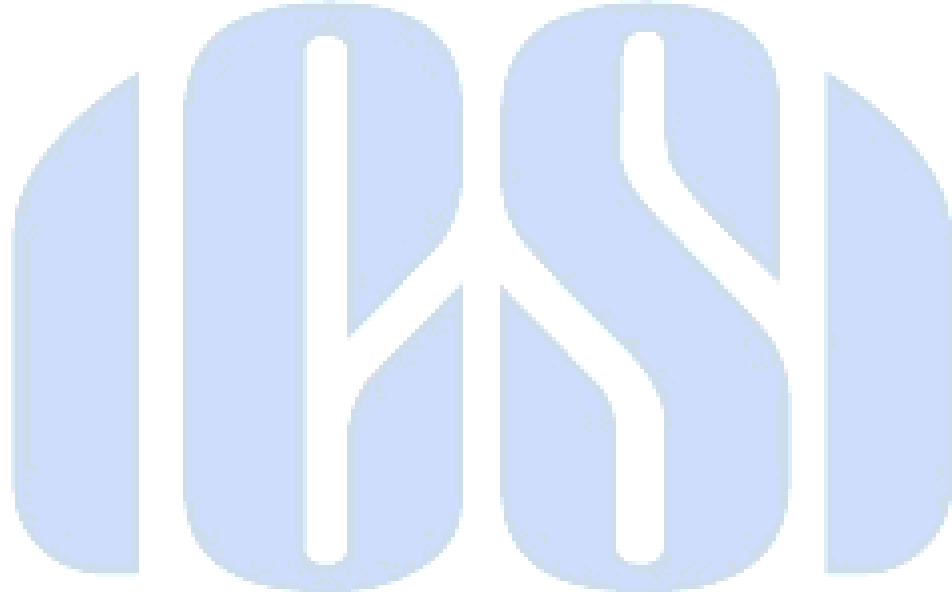
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THE COMPANIES (FILING OF DOCUMENTS AND FORMS IN EXTENSIBLE BUSINESS REPORTING LANGUAGE) RULES, 2011

Details can be accessed at:

http://mca.gov.in/Ministry/notification/pdf/notification_XBRL_rules.pdf





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

General Circular No. 66/2011

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

5th floor, „A“ Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi
Dated the 4th Oct, 2011

To

All Regional Directors
All Registrar of Companies.

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

Sir,

In continuation of General Circular No. 32/2011 dated 31.05.2011 on the subject cited matter, I am directed to say that the time for filing DIN-4 by DIN holders for furnishing the PAN and to update PAN details has been extended till **15.12.2011**.

Yours faithfully,

-Sd/-
(Monika Gupta)
Assistant Director

Copy to:

1. ICAI/ICWAI/ICSI/All Chamber of Commerce with a request to give wide publicity to their members.
2. DIN Cell to issue message through e-mail and SMS to all existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN to furnish their PAN by filing DIN-4 e-form by 15.12.2011 to avoid penal action.

Copy for information to:

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



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COMPANY LAW SETTLEMENT SCHEME, 2011

General Circular No. 65/2011

**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 4th Oct, 2011

To
All Regional Director,
All Registrars of Companies.

Subject: Company Law Settlement Scheme, 2011

Sir,

In continuation of the Ministry's General Circulars No. 59/2011 dated 05.08.2011 and No. 60/2011 dated 10.08.2011 on the subject cited above, it is stated that the said scheme has been extended upto **15th December, 2011**.

2. All the terms and conditions of the General Circulars No. 59/2011 dated 05.08.2011 and No. 60/2011 dated 10.08.2011 will remain the same.

Yours faithfully,

-Sd/-
(Monika Gupta)
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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COMPANY LAW BOARD (AMENDMENT) REGULATIONS, 2011

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

भारत का राजपत्र The Gazette of India



सत्यमेव जयते

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 509]

नई दिल्ली, शुक्रवार, सितम्बर 16, 2011/भाद्र 25, 1933

No. 509]

NEW DELHI, FRIDAY, SEPTEMBER 16, 2011/BHADRA 25, 1933

कम्पनी विधि बोर्ड

अधिसूचना

नई दिल्ली, 15 सितम्बर, 2011

सा.का.नि. 682(अ).—कम्पनी विधि बोर्ड, कम्पनी अधिनियम, 1956 (1956 का 1) की धारा 10ख की उप-धारा (4ख) और उप-धारा (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, कम्पनी विधि बोर्ड विनियम, 1991 का और संशोधन करने के लिए निम्नलिखित विनियम बनाता है, अर्थात् :—

1. (1) इन विनियमों का संक्षिप्त नाम कम्पनी विधि बोर्ड (संशोधन) विनियम, 2011¹ है।

(2) ये राजपत्र में इनके प्रकाशन की तारीख को प्रवृत्त होंगे।

2. कम्पनी विधि बोर्ड विनियम, 1991 के विनियम 29 के उप-विनियम 4 के परन्तुक के पश्चात् निम्नलिखित परन्तुक अंतःस्थापित किया जाएगा, अर्थात् :—

“परन्तु यह और कि भारत से बाहर निवासी किसी विदेशी पक्षकार पर किसी आदेश की तामील, पर्याप्त तामील समझी जाएगी यदि उसकी एक प्रति ऐसे पक्षकार के भारत में निवासी प्राधिकृत प्रतिनिधि (प्रतिनिधियों) पर, जहां वह ऐसे प्रतिनिधि (प्रतिनिधियों) के द्वारा उपसंजात होता है, उसके (उनके) अंतिम ज्ञात पते पर परिदत्त या निविदत्त या डाक से भेजी जाती है।”

[फा. सं. 10/36/2001—सीएलबी]

कम्पनी विधि बोर्ड के आदेशानुसार,

पी. के. मल्होत्रा, सचिव

टिप्पण :—मूल विनियम संख्यांक सा.का.नि. 291(अ), तारीख 31 मई, 1991 द्वारा प्रकाशित किए गए थे और अंतिम संशोधन संख्यांक सा.का.नि. 185(अ), तारीख 17 मार्च, 2008 द्वारा किया गया।

3454 GI/2011

COMPANY LAW BOARD

NOTIFICATION

New Delhi, the 15th September, 2011

G.S.R. 682(E).—In exercise of the powers conferred by sub-section (4B) and sub-section (6) of Section 10E of the Companies Act, 1956 (1 of 1956), the Company Law Board hereby makes the following regulations further to amend the Company Law Board Regulations, 1991, namely :—

1. (1) These regulations may be called the Company Law Board (Amendment) Regulations, 2011.

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

2. In the Company Law Board Regulations, 1991 after the proviso to sub-regulation (4), of regulation 29 the following Proviso shall be inserted, namely :—

“Provided further that service of an order on a foreign party resident outside India shall be deemed to be sufficiently served if a copy thereof is delivered or tendered or sent by post at the last known address of such party's authorised representative(s) resident in India, where he appears by such representative(s).”

[F. No. 10/36/2001-CLB]

By Order of the Company Law Board,

P. K. MALHOTRA, Secy.

Note :—The Principal regulations were published vide number G.S.R. 291(E), dated 31st May, 1991 and were last amended vide number G.S.R. 185(E), dated 17th March, 2008.



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RBI UPDATE





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FOREIGN INVESTMENT IN INDIA BY SEBI REGISTERED FIIS IN OTHER SECURITIES

RBI/2011-12/244

A.P. (DIR Series) Circular No. 42

November 03, 2011

To,

All Category – I Authorized Dealer banks

Madam / Sir,

Foreign investment in India by SEBI registered FIIs in other securities

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to [A.P.\(DIR Series\) Circular No.55 dated April 29, 2011](#), in terms of which the limit for FII investment in non-convertible debentures / bonds issued by Indian companies in the infrastructure sector was enhanced from USD 5 billion to USD 25 billion. This was subject to the conditions that such instruments shall have a residual maturity of five years and above, the investments would have a lock-in-period of three years and 'infrastructure' would be as defined under the extant External Commercial Borrowings (ECB) policy. Attention of the AD Category-I banks is also invited to [A.P. \(DIR Series\) Circular No.8 dated August 9, 2011](#), in terms of which Qualified Foreign Investors as defined therein (QFIs) were allowed to invest in units of Mutual Funds debt schemes upto a limit of USD three billion within the overall limit of USD 25 billion for FII investment in non-convertible debentures / bonds issued by Indian companies in the infrastructure sector.

2. On a review it has been decided as under :

i) FIIs would also be allowed to invest in non-convertible debentures / bonds issued by Non-Banking Financial Companies categorized as 'Infrastructure Finance Companies'(IFCs) by the Reserve Bank of India within the overall limit of USD 25 billion.

ii) The lock-in-period of three years for FII investment stands reduced to one year up to an amount of USD 5 billion within the overall limit of USD 25 billion. This lock-in-period shall be computed from the time of first purchase by FIIs.

iii) The residual maturity of five years and above stipulated would now onwards refer to the original maturity of the instrument at the time of first purchase by an FII.



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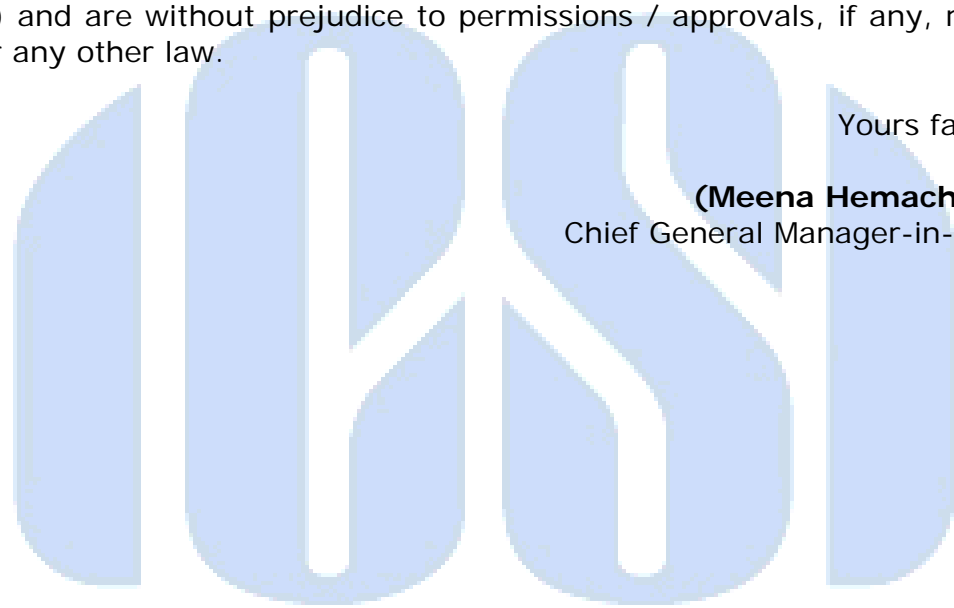


iv) The above changes at (i) and (iii) above would also apply for QFI investment in units of Mutual Fund debt schemes within the limit of USD three billion.

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

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

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



Yours faithfully,
(Meena Hemachandra)
Chief General Manager-in- Charge





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MEMORANDUM OF INSTRUCTIONS GOVERNING MONEY CHANGING ACTIVITIES

RBI/2011-12/242
A.P. (DIR Series) Circular No. 41

November 01, 2011

To,
All Authorised Persons in Foreign Exchange
Madam/ Sir,

Memorandum of Instructions governing money changing activities

Attention of Authorised Persons is invited to Para-3 of Part B of the Annex- I to the Memorandum of Instructions to Authorised Money Changers (AMCs), issued vide [A. P. \(DIR Series\) Circular No. 57 \[A.P. \(FL/RL Series\) Circular No. 04\] dated March 09, 2009](#) in terms of which applications from AMCs for additional offices in metropolitan cities are considered if the total offices (including proposed offices) of the applicant are in the ratio 1:1 (i.e. the applicant has one non-metropolitan office for every office in a metro).

2. In order to provide more flexibility, to authorised persons to decide the location of their branches, it has been decided to dispense with the criteria of 1:1 ratio between metro and non-metro branches. However, we expect branches to be diversified and to be meeting the demand of tourists, etc. All the other instructions shall remain unchanged.

3. Authorised Persons may bring the contents of this circular to the notice of their constituents concerned.

4. The directions contained in this Circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and non-compliance with the guidelines would attract penal provisions of Section 11(3) of the Act *ibid*.

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge



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EXPORT OF GOODS AND SOFTWARE – REALISATION AND REPATRIATION OF EXPORT PROCEEDS – LIBERALISATION

RBI/2011-12/241
A.P. (DIR Series) Circular No.40

November 01, 2011

To,

All Category - I Authorised Dealer Banks

Madam / Sir,

Export of Goods and Software – Realisation and Repatriation of export proceeds – Liberalisation

Attention of Authorised Dealer Category-I (AD Category-I) banks is invited to [A.P. \(DIR Series\) Circular No. 47 dated March 31, 2011](#) enhancing the period of realization and repatriation to India of the amount representing the full export value of goods or software exported, from **six months to twelve months** from the date of export. This relaxation was available up to September 30, 2011.

2. The issue has since been reviewed and it has been decided, in consultation with the Government of India, to extend the above relaxation w.e.f. October 01, 2011 till September 30, 2012.

3. The provisions in regard to period of realization and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remain unchanged.

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

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

Yours faithfully,

(Rashmi Fauzdar)
Chief General Manager



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SEBI UPDATE





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Shri Rajeev Kumar Agarwal takes charge as Whole Time Member, SEBI

PR No. 143/2011

Shri Rajeev Kumar Agarwal has taken charge as Whole Time Member, Securities and Exchange Board of India in Mumbai today.

An IIT Roorkee alumnus, he is a 1983-batch Indian Revenue Service (IRS) Officer and prior to this assignment, he held the position of Commissioner, Income Tax. He has wide experience in investigation and regulation of financial markets.

He has served as a member of the Forward Markets Commission (FMC) - the regulator for the commodity futures business for a period of five-and-a-half years, where he was responsible for laying down the regulatory mechanisms for commodity futures markets and the development of the markets which had just started their operations. He has been associated with stock market investigations also while in Income Tax Department. He has been member of various Committees of Government of India notably "Futures Markets and Internal Trade". He has attended various training programmes/seminars/conferences organised by prestigious foreign institutions/regulators including International Organisation of Securities Commissions (IOSCO), Commodity Futures Trading Commission (CFTC), Euromoney, USAID etc.

Mumbai

November 03, 2011



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DCFT UPDATE





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GRANT OF DEPB AGAINST FREE SHIPPING BILLS CONVERTED BY THE CUSTOMS AUTHORITIES

Government of India
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi-110011

Policy Circular No. 44 (RE-2010)/2009-14
Dated: 01.11.2011

To

All Regional Authorities (RAs);
All Commissioners of Customs;
Exporting Community.

**Subject: Grant of DEPB against free Shipping Bills converted by the
Customs Authorities.**

Para 2.56 of HBP v.1 provides for conversion of EP copy of the Shipping Bill from one scheme to another. The relevant portion of the para is extracted below: -

"Conversion of E.P. copy of shipping bill from one Scheme to Another:

If Customs Authorities, after recording reasons in writing, permit conversion of an E.P. copy of any scheme-shipping bill on which benefit of that scheme has not been availed, exporter would be entitled to benefit under scheme in which shipment is subsequently converted".

2. Conversion of free shipping bills to DEPB Shipping Bills were allowed by the Department of Revenue vide Customs Circular No.6/2003-Cus. dated 28.1.2003 whereby Commissioner of Customs were given powers to allow such conversions. In accordance with the instructions, conversions were done by Customs. Subsequently, vide Circular No.4/2004-Cus. dated 16.1.2004 the facility to allow the conversion of free shipping bills to export promotion schemes were withdrawn. In this background, instructions were issued to the Regional Authorities not to grant DEPB benefits against such shipping bills which were converted by the Customs authorities. Some of the exporters approached High Courts claiming that DEPB should be given in cases where the conversions have been allowed by Customs.



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3. In a case filed by M/s. Estocorp (India) Pvt. Ltd., the Delhi High Court (in a Writ Petition No.14367/2005) allowed the claim of the petitioner for grant of DEPB against converted shipping bills. In their order dated 3.2.2011, the High Court observed that since the petitioner got the shipping bills converted prior to issue of Customs Circular No.4/2004 dated 16.1.2004, the claim cannot be denied.

4. Therefore, between the two material dates i.e. between 28.1.2003 and 15.1.2004, in case if the Commissioner of Customs has already allowed the conversion of free Shipping Bill to DEPB Shipping Bill, the DEPB claims can be admitted. Accordingly, RAs are instructed to decide the admissibility of DEPB claims. Old cases which were rejected can also be reviewed.

This issues with the approval of competent authority.

Sd/-
(C. Gangadharan)
Dy. Director General of Foreign Trade
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Email: c.gangadharan@nic.in

(Issued from F. No. 01/94/180/597/AM'11/PC-IV)
