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## CS Update

September 27, 2011

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- ADJUDICATION OF APPRAISING RELATED SHOW CAUSE NOTICES (*CBEC dated 23 September, 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

10 PCH  
for  
Members of  
ICSI

#### *Venue*

Jaypee Palace Hotel & Convention Centre, Agra

### 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/Default.aspx?alias=www.icsi.edu/39nc>



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## 6<sup>th</sup> 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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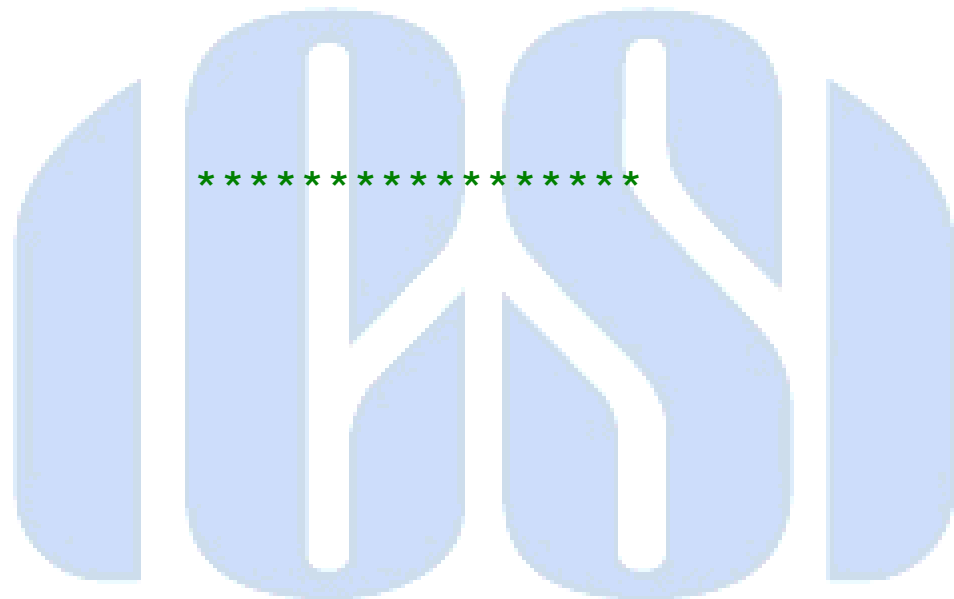
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## RECORDING OF WEBCAST ON XBRL ARRANGED BY ICSI

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. Code for Responsible Investing in South Africa' (CRISA) 19 July 2011

The Code for Responsible Investing in South Africa (CRISA) was launched by Committee on Responsible Investing by Institutional Investors in South Africa in order to encourage institutional investors to integrate into their investment decisions sustainability issues such as environmental, social and governance (ESG). It aims to provide the investor community with the guidance needed to give effect to the King Report on Corporate Governance South Africa (King III) as well as the United Nations-backed Principles for Responsible Investment (PRI) initiative. Both require institutional investors to consider ESG issues in their investment.

It applies to institutional investors such as pension funds and insurance companies as the owners of assets, and their service providers including asset managers and consultants. It encourages institutional investors and service providers to adopt its principles and practice recommendations on an "apply or explain" basis. The effective date for reporting on the application of CRISA is 1 February 2012.

The King Code was written from the perspective of the board of the company as the focal point of corporate governance. CRISA is intended to give guidance on how the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance.

Institutional investors and service providers are expected to adopt the principles and practice recommendations in CRISA on an "apply or explain" basis. Where there is conflict between CRISA and applicable legislation, the legislation will prevail.

The code contains five principles and practice recommendations for the institutional investors and service providers. If an institutional investor has not fully applied one of the Principles of the Code, the reasons should be disclosed. Disclosure as well as policies should be made public.

Detailed code can be accessed at:

[http://www.iodsa.co.za/Portals/0/library/documents/CRISA\\_19\\_July\\_2011.pdf](http://www.iodsa.co.za/Portals/0/library/documents/CRISA_19_July_2011.pdf)



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## **2. International Integrated Reporting Committee (IIRC) Pilot Programme**

Integrated Reporting demonstrates the linkages between an organization's strategy, governance and financial performance and the social, environmental and economic context within which it operates. By reinforcing these connections, it can help business to take more sustainable decisions and enable investors and other stakeholders to understand how an organization is really performing. It supports the creation of long-term sustainable value by bringing together financial and non-financial information on areas that are material to an organization's strategy and business performance.

The International Integrated Reporting Committee (IIRC) was established to create a globally accepted integrated reporting framework which brings together financial, environmental, social and governance information in a clear, concise, consistent and comparable format.

IIRC has launched the Pilot Programme to bring together a group of leading companies across different industry sectors and geographies to test the initial proposals for an International Integrated Reporting Framework being developed by the IIRC. Through participation in the Programme, companies will develop an expertise in Integrated Reporting, supported by a network of peer-group companies with whom knowledge can be exchanged and experiences shared in applying the principles of the IIRC's draft Integrated Reporting Framework.

Companies should register their interest in joining the Programme by emailing the [expression of interest form](#) to [pilotprogramme@theiirc.org](mailto:pilotprogramme@theiirc.org). The IIRC encourages early expression of interest. The programme commences in October 2011.

The Integrated Reporting Pilot Programme offers a select group of companies the opportunity to demonstrate global leadership in this emerging field of corporate reporting.

The Pilot Programme will underpin the development of the Integrated Reporting framework in 2011 and onwards. Through the Pilot Programme, the principles and practicalities of Integrated Reporting will be tried and tested, to support the creation a new global standard in Integrated Reporting. The Programme will consist of three phases:

1. Dry run –
2. Pilot Cycle 1
3. Pilot Cycle 2

The Pilot Programme encompasses companies and the investor community, with expert support from the secretariat of the International Integrated Reporting Committee (IIRC) and peer group feedback from other participants in the Programme.

The **details** can be accessed at:

<http://www.theiirc.org/>



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## GREEN CORNER

### GREEN IDEA



### E-waste Management

Manage your e-waste responsibly.

Loosely discarded, surplus, obsolete, or broken electrical or electronic devices is e-waste.

Informal processing of electronic waste in developing countries causes serious health and pollution problems.

Contact nearest E-waste Management facility before dumping your e-waste.

### Something Good:

**Concept of 'Paryavarana Ganapathi'** -- The Andhra Pradesh Pollution Control Board (APPCB) is advocating celebrating eco-friendly Ganesha Chaturthi through various awareness programmes and workshops to promote clay Ganesh idols and use of environment-friendly colours to protect the water bodies. APPCB has dispatched guidelines set by the Central Pollution Control Board (CPCB) to district collectors and departments concerned for compliance.

### To Remember:

September 8 - International Literacy day  
September 15- International Democracy Day  
September 27- World tourism Day

## Quote of the Month

"Until the poor become asset creators, we are not empowering them."

2011 Ramon Magsaysay Award winner Harish Hande on poverty reduction

## 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.

--September 27<sup>th</sup>- 28<sup>th</sup> 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.



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**OECD - Asian Roundtable on Corporate Governance and the Task Force on Board Nomination and Election**

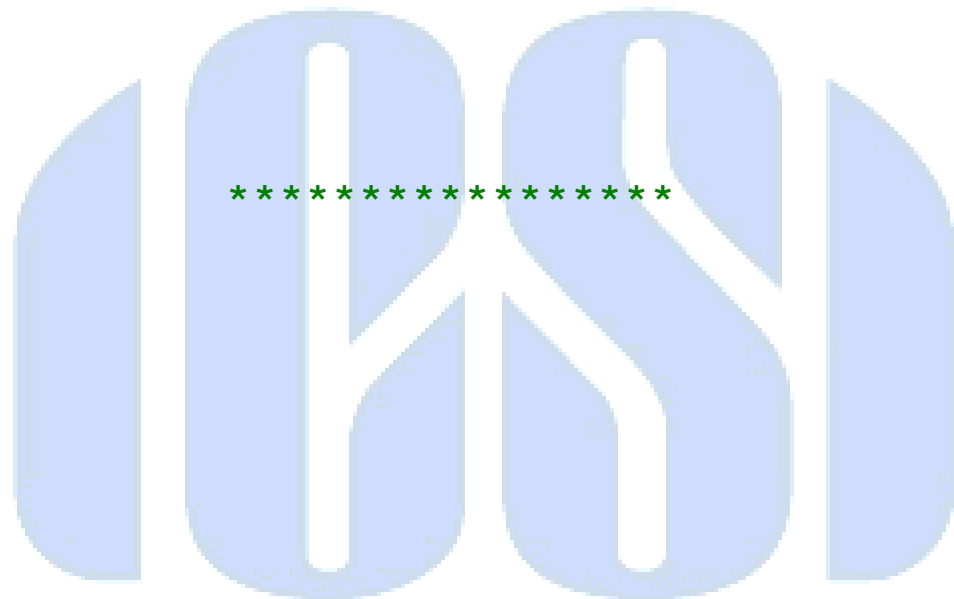
**--3-4<sup>th</sup> October, 2011, Bali, Indonesia**

## **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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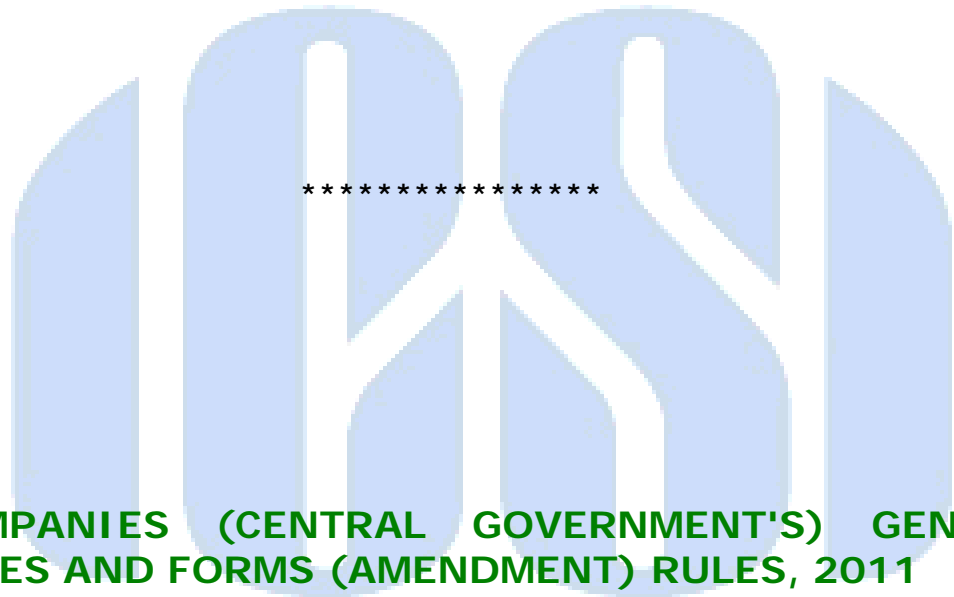
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## COMAPNIES (AMENDMENT) REGUALTIIONS, 2011

Details can be accessed at:

[http://www.mca.gov.in/Ministry/notification/pdf/GSR\\_22sept2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/GSR_22sept2011.pdf)



Details can be accessed at:

[http://www.mca.gov.in/Ministry/notification/pdf/GSR\\_\(E\)\\_23sept2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/GSR_(E)_23sept2011.pdf)

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## COMPLIANCE OF THE PROVISIONS OF COMPANIES ACT, 1956 AND RULES MADE THEREUNDER

General Circular No. 64/2011

F. No. 17/146/2011-CL V  
Government of India  
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi,  
Dated the 20th Sept, 2011

To

All Regional Director,  
All Registrars of Companies.

**Subject: Compliance of the provisions of Companies Act, 1956 and Rules made thereunder**

Sir,

Please refer to this Ministry's earlier circular no. 63/2011 dated 6<sup>th</sup> September, 2011 on the subject cited above. In this regard, I am directed to say that the said circular shall be implemented from 25th September, 2011.

Yours faithfully,

-sd/-  
(Sanjay Shorey)  
Joint 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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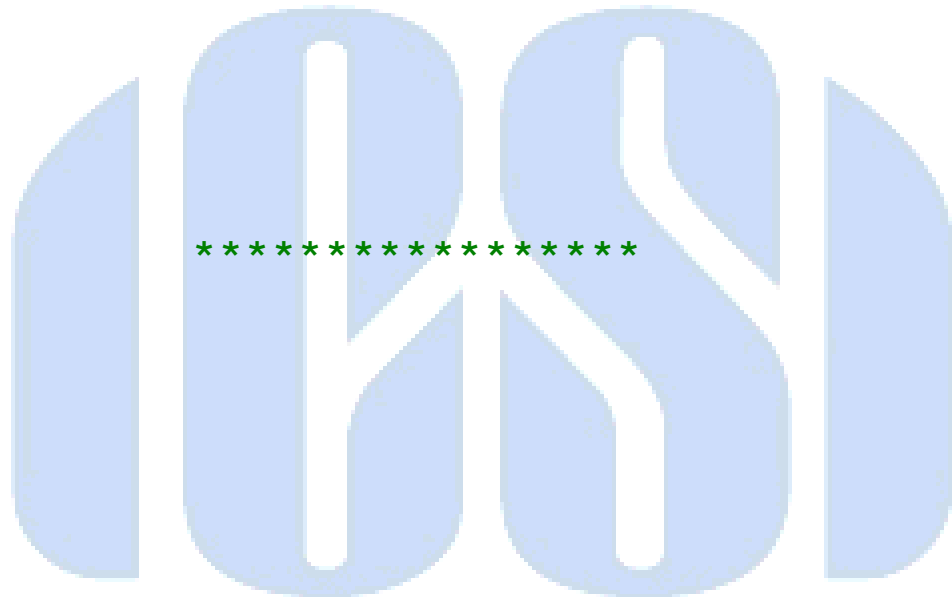
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**LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES, 2011 - SUBSTITUTION OF FORM 8 NOTIFICATION [F.NO. 2/17/2011-CLV], DATED 14-9-2011**

**Details can be accessed at:**

[http://www.llp.gov.in/files/F-8\\_English.pdf](http://www.llp.gov.in/files/F-8_English.pdf)





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## ANNUAL FILING 2011



### MINISTRY OF CORPORATE AFFAIRS GOVERNMENT OF INDIA

DEAR CORPORATES,

AS YOU ARE AWARE, THE LAST DATE FOR FILING OF YOUR COMPANY'S BALANCE SHEET AND ANNUAL RETURN FOR THE CURRENT YEAR IS FALLING DUE SOON. TO AVOID LAST MINUTE RUSH AND SYSTEM CONGESTION IN MCA21 DUE TO HEAVY FILING IN LAST 10 DAYS OF THE MONTHS OF OCTOBER AND NOVEMBER 2011, IT IS REQUESTED THAT FILING OF BALANCE SHEET AND ANNUAL RETURN MAY PREFERABLY BE DONE IN THE FOLLOWING ORDER:-

Company Names starting with	Preferable Dates for filing		
	September 2011	October 2011	November 2011
Alphabets A to D	All days during the month	1 <sup>st</sup> Oct to 05 Oct 2011	1 <sup>st</sup> Nov to 05 Nov 2011
Alphabets E to K	-do-	6 <sup>th</sup> Oct to 10 <sup>th</sup> Oct 2011	6 <sup>th</sup> Nov to 10 <sup>th</sup> Nov 2011
Alphabets L to Q	-do-	11 <sup>th</sup> Oct to 15 <sup>th</sup> Oct 2011	11 <sup>th</sup> Nov to 15 <sup>th</sup> Nov 2011
Alphabets R & S	-do-	16 <sup>th</sup> Oct to 20 <sup>th</sup> Oct 2011	16 <sup>th</sup> Nov to 20 <sup>th</sup> Nov 2011
Alphabets T to Z	-do-	21 <sup>st</sup> Oct to 25 <sup>th</sup> Oct 2011	21 <sup>st</sup> Nov to 25 <sup>th</sup> Nov 2011
Remaining/ Left out companies	-do-	26 <sup>th</sup> Oct to 31 <sup>st</sup> Oct 2011	26 <sup>th</sup> Nov to 30 <sup>th</sup> Nov 2011

KINDLY PLAN YOUR FILING ACCORDINGLY.

DURING THIS PERIOD, ROC FACILITATION CENTRES/ HELP DESKS WOULD GIVE PRIORITY IN EFILING/ ANSWERING QUERIES OF COMPANIES FALLING UNDER THE ABOVE ALPHABETICAL ORDER.

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## COMPLIANCE OF THE PROVISIONS OF COMPANIES ACT, 1956 AND RULES MADE THEREUNDER

General Circular No. 63/2011

F. No. 17/146/2011-CL V  
Government of India  
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi,  
Dated the 6th Sept, 2011

To  
All Regional Director,  
All Registrars of Companies.

**Subject: Compliance of the provisions of Companies Act, 1956 and Rules made thereunder**

Sir,

The Ministry has issued General Circular No. 33/2011 dated 01.06.2011 wherein it was informed that in order to ensure corporate governance and proper compliances of provisions of Companies Act, 1956, no request, whether oral or in writing or through e-forms, for recording any event based information / changes shall be accepted by the Registrar of Companies from such defaulting companies, unless they file their updated Balance Sheet and Profit & Loss Accounts and Annual Return with the Registrar of Companies.

2. However, in the interest of stakeholders certain event based information /changes were being accepted by the Registrar from such defaulting companies. Now, on the requests received from various quarters of the corporates & professionals, following forms will also be accepted by the Registrar.

(a) Filing by Directors of defaulting Companies in respect of such companies:-

Form 2	Return of allotment
Form 3	Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash
Form 5	Notice of consolidation, division, etc. or increase in share capital or increase in number of members
Form 23	Registration of resolution(s) and agreement(s)
Form 61	Form for filing an application for compounding of offences

(b) Filing by Directors of defaulting Companies in respect of Companies having the status of Dormant Companies.



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Form 61	Form for filing an application with Registrar of Companies for normalizing the company and compounding of offences.
DIN-3	Intimation of Director Identification Number by the company to the Registrar
Form 32	<b>(for appointment of signatory added through BO screen)</b> Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares
Form 21	Notice of the court or the company law board order
Form FTE	Application for striking off the name of company under the Fast Track Exit (FTE) Mode

**(c) Filing by Directors of defaulting Companies in respect of Companies having the status as active in progress companies**

DIN-3	Intimation of Director Identification Number by the company to the Registrar
Form 32	<b>(for appointment of signatory added through BO screen)</b> Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares
Form 2	Return of allotment
Form 3	Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash
Form 5	Notice of consolidation, division, etc. or increase in share capital or increase in number of members
Form 21	Notice of the court or the company law board order
Form 23	Registration of resolution(s) and agreement(s)
Form 61	Form for filing an application for compounding of offences
Form 23AC	Form for filing balance sheet and other documents with the Registrar
Form 23ACA	Form for filing Profit and Loss account and other documents with the Registrar
Form 20B	Form for filing annual return by a company having a share capital with the Registrar
Form 21A	Particulars of annual return for the company not having share capital
Form 66	Form for submission of compliance certificate with the Registrar
Form 23 B	Information by Auditor to Registrar



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Form FTE

Application for striking off the name of company under the Fast Track Exit (FTE) Mode

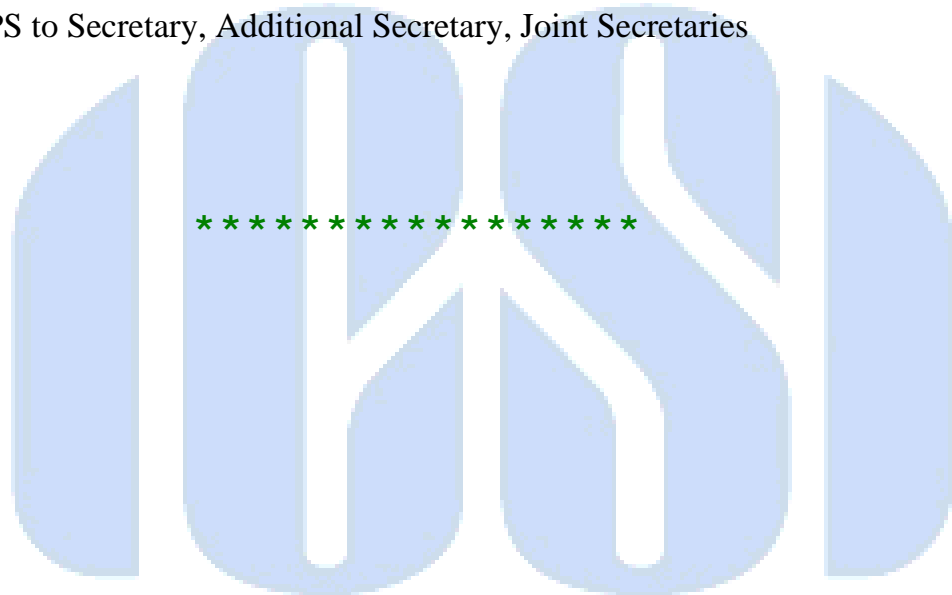
3. This circular shall be effective from 18<sup>th</sup> Sept, 2011.

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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# RBI UPDATE





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## EXTERNAL COMMERCIAL BORROWINGS (ECB) FROM THE FOREIGN EQUITY HOLDERS

RBI/2011-12/204

A.P. (DIR Series) Circular No. 29

September 26, 2011

To

All Authorised Dealer Category I Banks

Madam / Sir,

### External Commercial Borrowings (ECB) from the foreign equity holders

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to the Foreign Exchange Management (Borrowing or lending in foreign exchange) Regulations, 2000, notified vide [Notification No. FEMA 3/2000-RB dated May 3, 2000](#), amended from time to time and the A.P. (DIR Series) Circular No. 5 dated August 1, 2005, amended from time to time relating to the External Commercial Borrowings (ECB).

2. As per the extant ECB policy, a 'foreign equity holder' to be eligible as 'recognised lender' **under the automatic route** would require minimum holding of paid-up equity in the borrower company as set out below:

(i) for ECB up to USD 5 million – minimum paid-up equity of 25 per cent held directly by the lender,

(ii) for ECB more than USD 5 million – minimum paid-up equity of 25 per cent held directly by the lender and debt-equity ratio not exceeding 4:1 (i.e. the proposed ECB does not exceeds four times the direct foreign equity holding).

3. To further rationalize the policy in this regard, the following clarifications are being issued:-

(i) Now onwards the term 'debt' in the debt-equity ratio will be replaced with 'ECB liability' and the ratio will be known as 'ECB liability'-equity ratio to make the term signify true position as other borrowings/debt are not considered in working out this ratio;

(ii) The paid-up capital contributed by the foreign equity holder is considered under the extant guidelines for the purpose of calculation of equity for ECBs of or beyond USD 5 million from direct foreign equity holders. Henceforth, besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the equity of the foreign equity holder. Where there are more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

(iii) For calculating the ECB liability, not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender should be reckoned.



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## Further guidelines

4. To benefit eligible borrowers, it has been decided, in consultation with the Government of India, to consider the ECB proposals from foreign equity holders (direct/indirect) and group companies **under the approval route** as under:-

(i) Service sector units, in addition to those in hotels, hospitals and software, could also be considered as eligible borrowers if the **loan is obtained from foreign equity holders**. This would facilitate borrowing by training institutions, R &D, miscellaneous service companies, etc;

(ii) ECB from indirect equity holders may be considered provided the indirect equity holding by the lender in the Indian company is at least 51 per cent ; and

(iii) ECB from a group company may also be permitted provided both the borrower and the foreign lender are subsidiaries of the same parent.

5. While submitting these proposals, it may be ensured that total outstanding stock of ECBs (including the proposed ECBs) from a foreign equity lender does not exceed 7 times the equity holding, either directly or indirectly of the lender (in case of lending by a group company, equity holdings by the common parent would be reckoned).

6. All other aspects of the ECB policy, such as, maximum permissible limit per company per financial year under the automatic route, eligible borrower, end-use, all-in-cost ceiling, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged.

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

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

Yours faithfully,

**(Rashmi Fauzdar)**  
**Chief General Manager**

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## **EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY – STRUCTURED OBLIGATIONS FOR INFRASTRUCTURE SECTOR**

**RBI/2011-12/203**

**A.P. (DIR Series) Circular No. 28**

**September 26, 2011**

To,

All Category - I Authorised Dealer Banks

Madam / Sir,

### **External Commercial Borrowings (ECB) Policy – Structured Obligations for infrastructure sector**

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to [A.P. \(DIR Series\) Circular No. 40 dated March 02, 2010](#) relating to External Commercial Borrowings (ECB) Policy – Structured Obligations.

2. As per extant guidelines, credit enhancement is permitted to be provided by multilateral / regional financial institutions and Government owned development financial institutions for domestic debt raised through issue of capital market instruments, such as, debentures and bonds, by Indian companies engaged exclusively in the development of infrastructure and by the Infrastructure Finance Companies (IFCs), which have been classified as such by the Reserve Bank under the approval route.

3. On a review, it has been decided to further liberalise the policy relating to structured obligations to permit direct foreign equity holder(s) as per extant ECB guidelines (minimum holding of 25 per cent of the paid up capital) and indirect foreign equity holder, holding atleast 51% of the paid-up capital, to provide credit enhancement to Indian companies engaged exclusively in the development of infrastructure, where “infrastructure” is as defined under the extant guidelines on ECB and by the Infrastructure Finance Companies (IFCs), which have been classified as such by the Reserve Bank.

4. Credit enhancement by all eligible non-resident entities will henceforth be permitted under the automatic route and no prior approval will be required from the Reserve Bank. All the other terms and conditions mentioned in para 4 (ii) to (viii) of A.P. (DIR Series) Circular No. 40 dated March 02, 2010 will remain unchanged.

5. The amended policy will come into force with immediate effect and is subject to review.

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



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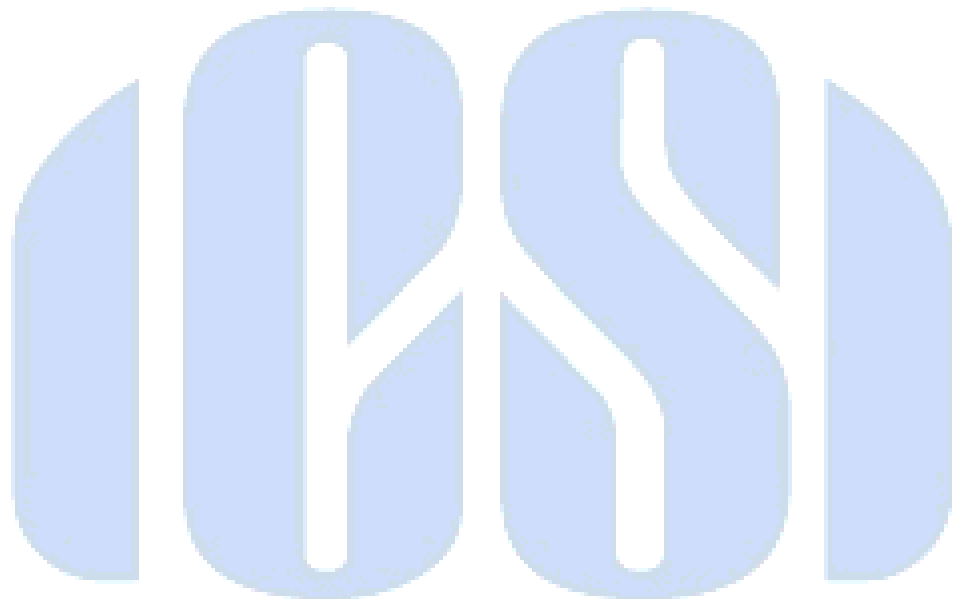


7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

**(Rashmi Fauzdar)  
Chief General Manager**

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## EXTERNAL COMMERCIAL BORROWINGS (ECB) – RATIONALISATION AND LIBERALISATION

RBI/2011-12/201  
A.P. (DIR Series) Circular No.27

September 23, 2011

To

All Authorised Dealer Category I Banks

Madam / Sir,

### External Commercial Borrowings (ECB) – Rationalisation and Liberalisation

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to the Foreign Exchange Management (Borrowing or lending in foreign exchange) Regulations, 2000, notified vide [Notification No. FEMA 3/2000-RB dated May 3, 2000](#), amended from time to time and the [A.P. \(DIR Series\) Circular No. 5 dated August 1, 2005](#), amended from time to time relating to the External Commercial Borrowings (ECB).

2. On a review of the extant ECB policy, it has been decided, in consultation with the Government of India, to further rationalise and liberalize the ECB guidelines as under:-

#### (i) Enhancement of ECB limit under the automatic route

(a) Eligible borrowers in real sector-industrial sector-infrastructure sector can avail of ECB up to USD 750 million or equivalent per financial year under the automatic route as against the present limit of USD 500 million or equivalent per financial year.

(b) Corporates in specified service sectors viz. hotel, hospital and software, can avail of ECB up to USD 200 million or equivalent during a financial year as against the present limit of USD 100 million or equivalent per financial year subject to the condition that the proceeds of the ECBs should not be used for acquisition of land.

#### (ii) ECBs designated in INR

(a) 'All eligible borrowers' can avail of ECBs designated in INR from **foreign equity holders under the automatic/ approval route, as the case may be**, as per the extant ECB guidelines.

(b) NGOs engaged in micro finance activities will, however, be permitted to avail of ECBs designated in INR, as hitherto, under the automatic route from overseas organizations and individuals as per the extant guidelines.

#### (iii) ECB for Interest During Construction (IDC)

It has been decided to consider IDC as a permissible end-use for the Indian companies which are in the infrastructure sector, where "infrastructure" is defined in terms of the



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extant guidelines on External Commercial Borrowings (ECB) **under the automatic/approval route, as the case may be**, subject to the following conditions:-

(a) that the IDC is capitalized; and

(b) is part of the project cost.

3. All other aspects of the ECB policy such as eligible borrower, recognised lender, all-in-cost, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged

4. The amended ECB policy will come into force with immediate effect and is subject to review at any point of time.

5. Necessary amendments to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 dated May 3, 2000 are being issued separately wherever necessary.

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

7. The directions contained in this circular has 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,

**(Rashmi Fauzdar)**  
**Chief General Manager**

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# SEBI UPDATE





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## SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

Details can be accessed at:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1316778211380.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1316778211380.pdf)

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## SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2011

Details can be accessed at:

[Securities and Exchange Board of India \(Issue Of Capital And Disclosure Requirements\) \(Second Amendment\) Regulations, 2011](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1317044891201.pdf)

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## CONCEPT PAPER ON PROPOSED INVESTMENT ADVISOR REGULATIONS PLACED FOR PUBLIC-COMMENTS

Details can be accessed at:

[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1317044891201.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1317044891201.pdf)

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# TAX LAW UPDATE





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## ADJUDICATION OF APPRAISING RELATED SHOW CAUSE NOTICES

Circular No. 44 /2011- Customs

F. No.437/143/2009-Cus.IV

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs

229 A, North Block

New Delhi, dated 23<sup>rd</sup> September, 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.  
Director General of Revenue Intelligence.  
Director General of Central Excise Intelligence.  
All Directors General.

**Subject: Adjudication of appraising related Show Cause Notices- regarding**

Sir / Madam,

Consequent to the judgement of Hon'ble Supreme Court dated 18.02.2011, in Civil Appeals Nos. 4294-4295 of 2002 and Nos. 4603-4604 of 2005 (commonly referred to as Sayed Ali case), Board issued an Instruction F.No.437/143/2009-Cus.IV(pt) dated 15.04.2011 directing the field formations to examine pending Show Cause Notices and wherever these are not hit by time limitation to get these issued afresh by the jurisdictional Commissionerates.

2. Further, as a prospective remedial measure, in terms of Section 2(34) of the Customs Act, 1962, the Board issued Notification No.44/2011-Customs (N.T.), dated 06.07.2011. By virtue of this Notification, officers of Directorate General of Revenue



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Intelligence (DRI), Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates were assigned the functions of the 'proper officer' for the purposes of Sections 17 and 28 of the said Act.

3. To address the issue of validity of Show Cause Notices issued prior to 06.07.2011, which was likely to be adversely impacted by the said judgment of the Hon'ble Supreme Court, a suitable legislative change was proposed. In this regard, the President has given assent to the Customs (Amendment and Validation) Bill, 2011 on 16.09.2011 and the corresponding Act has been published in the Gazette of India dated 20.09.2011 as Act No.14 of 2011. Thus, the amendment to Section 28 has come into force w.e.f. 16.09.2011. The said Act amends Section 28 of the Customs Act, 1962 by inserting clause (11), which reads as follows:

*"(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."*

4. Accordingly, as per the amended Section 28 of the Customs Act, 1962 Show Cause Notices issued prior to 06.07.2011 by officers of Customs, which would include officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence and similarly placed officers stand validated since these officers are retrospectively recognized as 'proper officers' for the purpose of Sections 17 and 28 of the said Act.

5. In this regard it may also be noted that in terms of Notification No.44/2011-Customs (N.T.), dated 06.07.2011 the officers of DRI and DGCEI are 'proper officers' for the purposes of Section 28. However, it is hereby directed by the Board that these officers shall not exercise authority in terms of clause (8) of Section 28 of the said Act. In other words, there shall be no change in the present practice and officers of DRI and DGCEI shall NOT adjudicate the Show Cause Notices issued under Section 28 of the said Act.

6. Since the matter pertaining to validity of Show Cause Notice stands settled in terms of Notification No.44/2011-Customs (N.T.), dated 06.07.2011 and amended Section 28 of the Customs Act, 1962, the Instruction F.No.437/143/2009-Cus.IV(pt) dated 15.04.2011 is no longer necessary. Hence, the said Instruction dated 15.04.2011 stands withdrawn with immediate effect.

7. Pending Show Cause Notices and cases before adjudicating authorities and before appellate and judicial authorities may be dealt with on the basis of the legal position explained above. Difficulty faced, if any, may be immediately brought to notice of the Board.

Yours faithfully,

(Subodh Singh)  
OSD (Customs), Tariff Unit  
Fax: 011-23092173

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