FORTHCOMING PROGRAMMES

- Training Programme for Internal Audit of Stock Brokers

MCA UPDATES

- Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2009

SEBI UPDATES

- SEBI order to Companies regarding pending Investor Complaints
- Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009

RBI UPDATES

- Guidelines for merger/amalgamation of UCBs
- Draft Guidelines for issuance and operation of Prepaid Payment Instruments in India

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FORTHCOMING PROGRAMMES

- Training Programme for Internal Audit of Stock Brokers
Training Programme for Internal Audit of Stock Brokers

Background

Periodical audit is one of the tools to ascertain the level of compliance among stock brokers of the exchanges. The scope of audit should cover the existence, scope and efficiency of the internal control system, compliance with the provisions of the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, SEBI (Stock brokers and Sub- brokers) Regulations, 1992, circulars issued by SEBI, agreements, KYC requirements, Bye-Laws of the Exchanges, data security and insurance in respect of the operations of the stock brokers/clearing members.

SEBI has issued circulars asking stock exchanges to direct stockbrokers/trading members/clearing members to carry out complete internal audit on a half yearly basis by chartered accountants, company secretaries or cost and management accountants who are in practice and who do not have any conflict of interest.

The programme

This executive education programme is offered by NISM, in co-ordination with BSE & NSE, for chartered accountants, cost accountants and company secretaries. It aims at helping them carry out effective internal audit of the broker’s books in order to satisfy the requirements of SEBI and the exchanges. The sessions discuss audit procedure and areas that the auditor should examine with references to what books, documents and data are to be checked. Programme faculty has been drawn from SEBI and the two main exchanges. Duration of the programme would be two days.

Offerings

There will be six programmes in Mumbai and two programmes each in Kolkata, New Delhi and Chennai.

The dates for the six Mumbai offerings are given below. The dates of the other metro cities are yet to be finalized.


Programme fee

The programme fees would be Rs.2,250/- (for both days; inclusive of service tax) per participant. The programme fee covers courseware, lunch and tea for both days. A participant certificate will be given to all the participants.

Registration for Mumbai offerings only

For registration and other details for Mumbai offerings kindly contact:

Mr.V.C.Chaturvedi, General Manager
National Institute of Securities Markets,
Mittal Court, 'B' Wing, First Floor
Nariman Point, Mumbai-400 021.
Ph: 22850451/22829281
Email:chaturvedivc@nismindia.com
MCA UPDATES

- Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2009
G.S.R.35 (E).- In exercise of powers conferred by clause (a) of sub-section (1) of section 642 read with section 605A of the Companies Act, 1956, the Central Government hereby makes the following rules further to amend the Companies (Issue of Indian Depository Receipts) Rules, 2004, namely:-

1. (1) These Rules may be called the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2009.

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

2. In the Companies (Issue of Indian Depository Receipts) Rules, 2004, hereinafter referred to as the principal rules, in rule 3, in sub-rule (i), -

(A) clause (b) shall be deleted and clauses (c) to (h) shall be renumbered as clauses (b) to (g) respectively.

(B) for the renumbered clause (f), the following shall be substituted, namely:- “(f) Overseas Custodian Bank” means a banking company which is established in a country outside India and which acts as custodian for the equity shares of Issuing Company, against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.”.

3. In the principal rules, in rule 5, -

(a) in sub-rule (1), in clause (ii), the words ‘or draft letter of offer’ shall be omitted;
(b) in sub-rule (1), in the proviso to clause (iii), the words ‘or letter of offer’ wherever occurring shall be omitted;
(c) in sub-rule (1), in clause (iv), the words ‘or letter of offer’ shall be omitted; 2
(d) in sub-rule (2), in clause (vi), the words ‘or letter of offer, as the case may be,’ shall be omitted;
(e) in sub-rule (2), in proviso to clause (vi), the words ‘or letter of offer’ shall be omitted.
4. In the principal rules, in rule 6 –

(a) sub-rule (ii) shall be deleted;
(b) sub-rule (iii) and sub-rule (iv) shall be renumbered as sub-rule (ii) and sub-rule (iii) respectively.

5. In the principal rules, in rule 7, in sub-rule (ii), for the words, figures and bracket “under clause (ii) of rule 5”, the words, figures and bracket “under clause (vi) of sub-rule (2) of rule 5” shall be substituted.

6. In the principal rules, in rule 9,–
(a) for the words, figures and bracket “in clause (iii) of rule 5”, the words, figures and bracket “in clause (iv) of sub-rule (2) of rule 5” shall be substituted;
(b) the following proviso shall be added:-
“Provided that the IDRs issued by an issuing company may be purchased, possessed and transferred by a person other than a person resident in India if such Issuing Company obtains specific approval from Reserve Bank of India in this regard or complies with any policy or guidelines that may be issued by RBI on the subject matter.”

7. In the principal rules, in rule 10,–
(a) in sub-rule (i), the word “resident” shall be omitted;
(b) in sub-rule (ii), for the words “Indian resident” wherever occurring, the words “holder of IDRs” shall be substituted.

8. In the principal rules, in rule 11, for sub-rules (i) and (ii), the following rule shall be substituted, namely: - “Every issuing company shall comply with such continuous disclosure requirements as may be specified by SEBI in this regard.”

9. In the principal rules, in the Schedule, in para 6, –
(a) for the sub-paragraphs (i) and (ii), the following shall be substituted, namely:-
“(i) Where the law of a country, in which the Issuing company is incorporated, requires annual statutory audit of the accounts of the Issuing company, a report by the statutory auditor of the Issuing company, in such form as may be prescribed by SEBI on -
(A) the audited financial statements and financial status of the Issuing Company in respect of three financial years immediately preceding the date of prospectus, and
(B) the financial status of the company for the period between the
last date of the period for which latest audited financial statements
are made and the date of prospectus:
Provided that in case of an Issuing Company which is a foreign bank
incorporated outside India and which is regulated by a Central Bank
which, in turn, is a member of Bank for International Settlements,
the requirement under this paragraph, in respect of period
beginning with last date of period for which the latest audited
financial statements are made and the date of prospectus shall be
satisfied, if the relevant financial statements are based on limited
review report of such statutory auditor.

(ii) Where the law of the country, in which the Issuing company is
incorporated, does not require annual statutory audit of the
accounts of the Issuing company, a report, in such form as may be
specified by SEBI, certified by a Chartered Accountant in practice
within the terms and meaning of the Chartered Accountant Act,
1949 on -
(A) the financial affairs of the Issuing Company, in particular on the
profits and losses for each of the three financial years immediately
preceding the date of prospectus and upon the assets and liabilities
of the Issuing Company and

(B) the financial status of the company for the period between the
last date of the period for which the latest financial statements are
made and the date of prospectus.

(iii) In case of both sub-paragraphs (i) and (ii) of this paragraph,
the gap between date of opening of issue and date of reports under
the said subparagraphs shall not exceed 120 days.”
(b) the sub-paragraph (iii) shall be re-numbered as sub-paragraph
(iv) and for clause (b) of renumbered sub-paragraph (iv), the
following shall be substituted, namely:-
“(b) The reports stated in sub-paragraphs (i) and (ii), as the case
may be, in respect of such body(ies) corporate also.”.

[F.No.1/2/2001-C.L.-V]
Jitesh Khosla,
Joint Secretary.

NOTE: The principal rules were published vide G.S.R. 131(E) dated

51. Orders of the Commission

(1) Where the Commission is of the opinion that the combination
has, or is likely to have, an appreciable adverse effect on
competition in the relevant market, it shall pass an order under sub section (2) of section 31 of the Act that the combination shall not take effect;

(2) Where the Commission is of the opinion that the combination does not or is not likely to have an appreciable adverse effect on competition, it shall pass an order under sub section (1) of section 31 of the Act, approving the combination;

(3) Where the Commission approves the combination with modification, the order of the Commission approving the combination shall specify the terms, conditions and the time for all constituent activities giving effect to the proposed combination and shall call for a compliance report;

(4) Where the modification to the combination, proposed by the Commission under sub section (3) or sub section (9) of section 31 of the Act, is not accepted by the parties to the combination, the Commission shall pass an order directing that the combination shall not take effect;

(5) Where the parties to the combination fail to carry out the modification within the stipulated time limit, the Commission shall issue appropriate direction;

(6) The Secretary shall communicate the decision of the Commission under sub regulations (1) or (2) or (4) or (5) of this regulation to the parties to the combination within seven days of such decision;

(7) The communication of decision, referred to in sub regulation (6), shall be followed by an order or direction which shall be served as per the procedure contained in the Competition Commission of India (General) Regulations, 200_.

BACK
SEBI UPDATES

- SEBI order to Companies regarding pending Investor Complaints
- Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009
Securities and Exchange Board of India

Office of Investor Assistance and Education (OIAE)

SEBI has been receiving large number of complaints from investors with respect to the following companies. Letters along with the complaints were sent to the companies, advising them to resolve the grievances and submit the status report to SEBI within 30 days. These companies have not responded to SEBI’s letter to resolve the complaints and some of the letters were returned undelivered. As per Section 15C of the SEBI Act, such companies shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

In view of the above, these companies are advised to obtain the complaints pending against them from the SEBI Office of Investor Assistance and Education and resolve the grievances. If any of these companies fails to redress the grievances and submit the status report of the grievances to SEBI within 30 days from the date of this advertisement, SEBI shall be constrained to take actions against these companies and their Directors, including initiating adjudication proceedings as per Section 15C of the SEBI Act or any other action as deemed appropriate in accordance with the provisions of SEBI Act.

The list of companies is as under:-

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<tr>
<th>SL NO</th>
<th>NAME OF THE COMPANY</th>
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<tbody>
<tr>
<td>1</td>
<td>AEC ENTERPRISES LTD</td>
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<td>2</td>
<td>AKAR LAMINATORS LTD</td>
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<td>3</td>
<td>BHUVAN TRIPURA INDUSTRIES LTD</td>
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<td>4</td>
<td>BINACA SYNTHETIC RESINS LTD</td>
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<td>5</td>
<td>CHICAGO SOFTWARE INDUSTRIES LTD</td>
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<td>D R INDUSTRIES LTD (NEW NAME-D R SOFTECH &amp; INDUSTRIES LTD)</td>
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<td>7</td>
<td>DHARNENDRA INDUSTRIES LTD</td>
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<td>DHARNENDRA OVERSEAS LTD</td>
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<td>GOODEARTH SYNTHETICS LTD</td>
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<td>INDU NISSAN OXO CHEMICAL INDUSTRIES LTD</td>
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<td>ISHWAR MEDICAL SERVICE LTD</td>
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<td>14</td>
<td>KANEOL OIL &amp; EXPORT INDUSTRIES LTD</td>
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<td>KOLAR INFORMATION TECHNOLOGIES LTD</td>
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<td>16</td>
<td>MANNA GLASS-TECH INDUSTRIES LTD</td>
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<td>NEXUS SOFTWARE LTD</td>
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<td>ROSSEL FINANCE LTD</td>
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<td>SOLID CARBIDE TOOLS LTD</td>
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<td>TOHEAL PHARMACHEM LTD</td>
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<td>25</td>
<td>VATSA CORPORATIONS LTD</td>
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<td>26</td>
<td>VITARA CHEMICALS LTD</td>
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THE GAZETTE OF INDIA
EXTRAORDINARY
PART -III- SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, JANUARY 28, 2009
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
MUMBAI, the 28th January, 2009
Securities and Exchange Board of India
(Substantial Acquisition of Shares and Takeovers)
(Amendment) Regulations, 2009

No. LAD-NRO/GN/2008-2009/33/15022. In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, namely:-

1. (i) These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009.
(ii) These regulations shall come into force on the date of their publication in the Official Gazette.

2. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 -
(i) after regulation 8, the following regulation shall be inserted, namely:-

"Disclosure of pledged shares.
8A. (1) A promoter or every person forming part of the promoter group of any company shall, within seven working days of commencement of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009, disclose details of shares of that company pledged by him, if any, to that company.
(2) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company.
(3) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.

Explanation: For the purposes of sub-regulations (1), (2) and (3) the term “promoter” and “promoter group” shall have the same meaning as is assigned to them under Clause 40A of the Listing Agreement.

(4) The company shall disclose the information received under sub-regulations (1), (2) and (3) to all the stock exchanges, on which the shares of company are listed, within 7 working days of the receipt thereof, if, during any quarter ending March, June, September and December of any year,:-

- 12 -
(a) aggregate number of pledged shares of a promoter or every person forming part of promoter group taken together with shares already pledged during that quarter by such promoter or persons exceeds twenty five thousand; or
(b) aggregate of total pledged shares of the promoter or every person forming part of promoter group along with the shares already pledged during that quarter by such promoter or persons exceeds one per cent. of total shareholding or voting rights of the company, whichever is lower.”

C. B. BHAVE
CHAIRMAN

Footnote:
1. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the said Regulations) were published in the Gazette of India on 20th February 1997, vide S.O. No. 124(E).
2. Subsequently a Corrigendum was published in the Gazette of India, Extra-Ordinary on 6th February 1998 vide S.O. No. 106(E).
3. The said Regulations were subsequently amended by -
   (a) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998 published in the Official Gazette vide S.O. 930(E) dated 28th October 1998.
   (c) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2000 published in the Official Gazette vide S.O. 1178 (E) dated 30th December 2000.
   (d) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 791 (E) dated 17th August 2001.
   (e) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 875 (E) dated 12th September 2001.
   (f) SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 1058 (E) dated 24th October 2001.
   (g) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2002 published in the Official Gazette vide S.O. 127(E) dated 29th January 2002.
   (h) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002 published in the Official Gazette vide S.O. 954(E) dated 9th September 2002.
   (i) SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2002 published in the Official Gazette vide S.O.1328 (E) dated 18th December, 2002.
(k) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2004 published in the Official Gazette vide S.O. 5 (E) dated 30th December, 2004 and effective from 03.01.05.

(l) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006 published in the Official Gazette vide S.O. 807 (E) dated 26th May, 2006.

(m) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2006 published in the Official Gazette vide S.O. 1330 (E) dated 21st August, 2006.


• Guidelines for merger/amalgamation of UCBs
• Draft Guidelines for issuance and operation of Prepaid Payment Instruments in India
Guidelines for merger/amalgamation of UCBs

RBI/2009-09/365
UCB Cir. 43/09.16.900/08-09

January 30, 2009

The Chief Executive Officers of all
Primary (Urban) Cooperative Banks

Dear Sir/Madam,

Guidelines for merger/amalgamation of UCBs

Please refer to our circular PCB.Cir.36/09.169.00/04-05 dared February 2, 2005 on the captioned subject. The extant guidelines inter alia provide that, where the net worth of the acquired bank is negative, the acquirer bank should protect the deposits of the acquired bank on its own or with upfront financial support from State Government.

2. In legacy cases pertaining to UCBs having negative net worth as on March 31, 2007, it has been decided that the Reserve Bank may also consider scheme of amalgamation that provides for payment to depositors under Section 16(2) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, financial contribution by the transferee bank and sacrifice by large depositors. The detailed guidelines for merger of UCBs in such legacy cases are given in Annex I. Further, guidelines have also been laid down for valuations of assets and liabilities of the transferor bank as detailed in Annex II. The additional incentives that may be provided to the transferee bank are listed in Annex III.


4. The new guidelines may be placed before the Board of Directors of your bank for their information.

5. Please acknowledge receipt to the Regional Office concerned of Reserve Bank.

Yours faithfully,

(A.K. Khound)
Chief General Manager-in-charge.

Encl: As above

Annex I

Guidelines for merger of UCBs (having negative net worth) with DICGC support

The following guidelines are laid down for considering sanction of scheme of mergers of UCBs (having negative net worth) with DICGC support.

1. Eligibility

1.1 Mergers of UCBs with DICGC support may be considered by the Reserve Bank in legacy cases, i.e. in case of UCBs, whose net worth was assessed negative through statutory inspections with reference to their financial position as on March 31, 2007 or earlier.

1.2 The UCB to be merged should be registered either in a State, which has signed MOU with the Reserve Bank or under the Multi-State Cooperative Societies Act, 2002, where RCS concerned assures to order merger in public interest as provided under the respective State Cooperative Societies Act or where CRCS prepares a scheme of amalgamation under Section 18 of the Multi-State Cooperative Societies Act, 2002.

1.3 Merger proposals may be considered where the transferee bank complies with the prudential parameters post-merger.

2. Essential conditions

2.1 Audit-cum-Due diligence

The audit-cum-due diligence should be carried out in respect of the transferor bank with reference to the financial position as at the close of business of the day immediately preceding the effective date of merger. For this purpose, independent auditors (chartered accountants) may be appointed by the transferee bank with the concurrence of DICGC.

2.2 Valuation of assets & liabilities
The valuations of assets and liabilities of the transferor bank should be as per the guidelines given in Annex II. The assets should be grouped into two categories, viz. liquid or readily realizable (hereafter called as “readily realizable assets”) and non-readily realizable or bad and doubtful (hereafter called as “non-readily realizable assets”). The “readily realizable assets” are those, which are considered to be realizable and have fair market value; and “non-readily realizable assets” are those, which do not have fair market value.

2.3 Deposit coverage ratio

2.3.1 The scheme of merger should provide the proportion of deposits of the transferor bank, which will be paid by the transferee bank out of the “readily realizable assets” of the transferor bank and from its own contribution, hereafter referred to as “deposit coverage ratio”. The deposit coverage ratio shall not be less than 65%. Higher deposit coverage ratio may be insisted upon depending upon the RBI assessment.

2.3.2 The “deposit coverage ratio” may be worked out in the following manner:
(a) The amount due to preferred and secured creditors should be deducted from the “readily realizable assets”, to determine the “net readily realizable asset”. Similarly, the amount due to preferred and secured creditors should be deducted from the total outside liabilities to arrive at “net outside liabilities”.
(b) The sum of “net readily realizable assets” and the contribution to be made by the transferee bank would be available for distribution amongst the depositors and unsecured creditors for repayment of “net outside liabilities”.
(c) The ratio between “net readily realizable assets” (say x) plus the amount of contribution to be made by the transferee bank (say y) and the “net amount of outside liabilities” (say z), may be called the “deposit coverage ratio” [(say x + y) / z].

2.3.3 The difference between the “net outside liabilities” and “net readily realizable assets”, hereafter called the “uncovered gap” would be met through contribution to be made by the transferee bank, claim on DICGC and sacrifice to be made by the large depositors.

2.4 Claims on DICGC

DICGC may pay to the depositors to the extent and in the manner prescribed under Section 16(2) of the DICGC Act, 1961.

2.5 Deposit protection

The transferee bank shall pay to each of the depositors and unsecured creditors of the transferor bank, irrespective of the amount of his/her deposits as per the deposit coverage ratio (i.e. pro rata payment). After pro rata payment to the depositors and unsecured creditors by the transferee bank, the insured depositors would be paid the claim amount as and when received from DICGC to the extent and in the manner prescribed under Section 16(2) of the DICGC Act, 1961. The implication is that while all depositors having balance upto rupees one lakh would be repaid their deposits in full out of the ‘net readily realizable asset’, contribution from the transferee bank and DICGC, the depositors having deposits above rupees one lakh would be protected to the extent of rupees one lakh or as per the deposit coverage ratio, whichever amount is higher.

2.6 Sharing of the recoveries from “non readily realizable assets”

2.6.1 As per provisions of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 and the DICGC General Regulations, 1961, the transferee bank shall repay the amount paid by the Corporation out of recoveries made after making provision for expenses in respect of such realizations. Though the Corporation has priority in appropriation of recoveries out of non readily realizable assets, it may consider sharing the recoveries from the “non readily realizable assets” net of expenses with other stakeholders, keeping in view the financial contribution to be made by the transferee bank and the larger interests of the depositors.

2.6.2 The “non readily realizable assets” would be held in a “Collection Account” for the purpose of meeting the repayment liabilities held in “Collection Account” in respect of (i) claims paid by DICGC, (ii) contribution made by the transferee bank, (iii) outstanding balance in the accounts of the depositors and other creditors and (iv) share capital.

2.7 Compliance with prudential parameters

Post-merger, the transferee bank should comply with the following prudential parameters:

i. The transferee bank should conform to the prescribed minimum CRAR.
ii. The net NPAs should normally be within a limit of 10%. However, where CRAR on consolidated basis remains much above the prescribed minimum, there could be some relaxation on this count.
iii. The operations of the transferee bank should remain profitable after merger
iv. The transferee bank should be in a position to comply with CRR/SLR on a consolidated basis.

Annex II

Guidelines for valuation of property and assets & liabilities in case of mergers

The independent auditors (Chartered Accountants) appointed by the transferee bank with the concurrence of DICGC should value the property and assets and reckon the liabilities of the transferor bank in accordance with the following provisions:

******
Cash & bank balances

Cash & bank balances are to be reckoned at their book value unless there is reasonable doubt about the repayment of deposits by the banks with which such balances are held. In the latter case, the realizable value of the deposits may be ascertained and reckoned, taking into account the financial position of the bank concerned and the facts and circumstances relevant for such assessment.

Investments

i) Investments including Government securities shall be valued at the market rates prevailing on the day immediately preceding the date of merger or at the rate as prescribed by Reserve Bank of India under investment guidelines, provided that the securities of the Central Government such as Post Office Certificates, Treasury Savings Deposit Certificates and any other securities or certificates issued under the Small Saving Scheme of the Central Government shall be valued at their face value or the encashable value as on the date of merger, whichever is higher.

ii) Where the market value of any Government Security such as the Zamindari Abolition Bonds or other similar security in respect of which the Principal is payable in installments, is not ascertainable or is for any reason not considered reflecting the fair value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable having regard to the installments of principal and interest remaining to be paid, the period during which such installments are payable, the yield of any security issued by the Government to which the security pertains and having the same or approximately the same maturity and other relevant factors.

iii) Where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued as per the extant valuation guidelines endorsed by Reserve Bank of India.

iv) Where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividends paid by it during the preceding five years and other relevant factors and neither the transferor bank nor the transferee bank shall not question the said valuation as from the date of the merger.

Loans & advances

i) Where the going concern approach is adopted as in case of merger between two sound banks, the loans and advances, including bills purchased/discounted, etc. may be valued as per the prudential norms laid down by the Reserve Bank, as that would be just and fair valuation for both the banks as normally reflected in their balance sheets.

ii) Where the gone concern approach is adopted as in case of banks working under directions issued under Section 35A of the Banking Regulation Act, 1949 (AACS) or in case of proposals involving sacrifice by the shareholders and/or depositors, advances including bills purchased and discounted, book debts and sundry assets, will be scrutinized by the auditor and such assets including portions thereof, will be classified into two categories, namely ‘Advances considered good and readily realizable’ (In short, referred to as “readily realizable assets”) and ‘Advances considered not readily realizable and/or bad or doubtful of recovery’(In short refereed to as “non-readily realizable assets”).

Furniture & fixtures

Furniture and fixtures, computer and all related hardware and peripherals etc. stationery in stock and other assets, if any, shall be valued at the written down value as per books or the realizable value as may be considered reasonable, whichever is lower.

Premises & immovable properties

Premises and all other immovable properties and any assets acquired in satisfaction of claims shall be valued at their market value.

Liabilities

Liabilities for purpose of this scheme shall include all contingent liabilities, which the transferee bank may reasonably be expected or required to meet after the said date of merger.

Incentives to transferee banks in case of mergers

The Reserve Bank may consider the following additional incentives to the transferee bank in case of mergers.

i) The transferee bank may be permitted to close down the loss incurring branches (net loss for last three years) of the transferor bank. The transferee bank, if need be, may be permitted to use these branch licences for opening new
branches in the expanded area of operation of the transferee bank (i.e. the area of operations of the transferor and transferee bank put together). Similarly, shifting/relocation of the branches of the transferor bank may be permitted within the expanded area of operation of the transferee bank, subject to the condition that the existing clientele is provided banking facilities through the existing/relocated branches of the transferor/transferee bank.

ii) The transferee bank may be permitted to retain the facilities such as AD category I, etc., where higher level of CRAR at 12 % is required on an on-going basis, provided it maintains the benchmark CRAR of 9%.

iii) The loans and advances considered as ‘readily realizable’ may be treated as ‘standard assets’ in the books of the transferee bank for a period of six months from the effective date of merger for recovery purposes as the transferee bank gives full value to these assets upfront for meeting the liability to the depositors. However, no income on such assets would be recognized during this period on accrual basis. The extant asset classification norm would apply thereafter.

iv) The minimum entry point capital of Rs.50 crore may not be insisted upon in case of UCBs, which become multi-state on account of taking over another UCB registered outside the state, as some of the UCBs predominantly cater to a particular community.
Draft Guidelines for issuance and operation of Prepaid Payment Instruments in India

Pre-paid payment instruments issued by banks and non-bank entities have been gaining popularity as a means of payment in India. In order to ensure an orderly development and operations of this product, Reserve Bank had proactively prepared an ‘Approach Paper’ covering the various issues pertaining to the product. This ‘approach paper on pre-paid payment instruments’ was placed on the RBI website for public comments on November 07, 2008. The last day for receipt of comments was November 30, 2008.

Comments were received from banks, existing issuers of pre-paid payment instruments, general public and other institutions. A series of meetings were also held with various stake holders. Taking into consideration the comments received/ discussions the draft guidelines have been prepared and are placed for public comments on our website.

Comments/suggestions may be e-mailed or faxed to 022-22691557 or addressed to Chief General Manager, Reserve Bank of India, Department of Payment and Settlement Systems, Central Office, 14th floor, Central Office Building, SBS Marg, Mumbai 400001 latest by February 10, 2009.

Alpana Killawala
Chief GeneralManager


Draft Guidelines for issuance and operation of Prepaid Payment Instruments in India

A. Purpose
To provide a framework for the regulation and supervision of all the entities involved in issuance of Prepaid Payment Instruments in the country and to ensure orderly development of this segment of the payments and settlement system in a prudent and customer friendly manner.

B. Scope
These guidelines lay down the eligibility criteria and the basic conditions for issuance of prepaid payment instruments in the country. All entities seeking to issue prepaid payment instruments in India shall comply with these guidelines.

All non-bank entities proposing to issue such instruments, unless otherwise specifically exempted as per the guidelines, shall seek authorization from the Reserve Bank of India, under the Payment and Settlement System Act 2007.

Banks and Registered Non-Bank Financial Companies seeking to issue such instruments shall seek approval from the Department of Payment and Settlement Systems, Reserve Bank of India.

All entities currently issuing such instruments shall comply with the guidelines within three months from the date of issuance of these guidelines.

C. Structure
1. Introduction
2. Definitions
3. Eligibility
4. Exemption
5. Capital requirements
6. Safeguards against money laundering KYC/AML/CFT provisions
7. Deployment of Money collected
8. Issuance and reloading of prepaid payment instruments
9. Validity
10. Redemption
11. Fraud prevention and Security standards
12. Customer Protection Issue

1. Introduction

1.1 Banks and non-bank entities have been issuing prepaid payment instruments in the country. Hitherto only banks proposing to issue prepaid payment instruments were approaching Reserve Bank for authorization. Consequent to the passing of Payment and Settlement systems, Act 2007, all non-bank entities currently issuing prepaid payment instruments and those proposing to issue such payment instruments would have to approach Reserve Bank for authorization. In the emerging scenario, it is imperative to have a set of guidelines for prepaid payment instruments that would cover both banks and non-bank entities, to ensure orderly development and operations of prepaid instruments in the country. Reserve Bank of India has therefore has brought out these set of operating guidelines. These guidelines lay down the eligibility criteria and the basic conditions for issuance of prepaid payment instruments in the country.

2. Definitions

2.1 Issuer: Entities issuing prepaid payment instrument to individuals/organizations. The money collected is retained by these entities and they make payment to the merchants who are part of the acceptance arrangement directly or through a settlement arrangement.

2.2 Holder: Individuals/Organizations who acquire prepaid payment instruments for purchase of goods and services.

2.3 Prepaid Payment Instruments: Prepaid payment instruments are payment instruments that facilitate purchase of goods and services against the value stored on such instruments. The value stored on such instruments represents the value paid for by the holder, by cash, by debit to a bank account, or by credit card. The Prepaid instruments can be issued as smart cards, magnetic stripe cards, internet accounts, internet wallets, mobile accounts, mobile wallets, paper vouchers and any such instruments which can be used to access the prepaid amount (collectively called Payment Instruments hereafter).

The prepaid payment instruments that can be issued in the country are classified under the four categories viz. (i) Closed system payment instruments (ii) Semi-Closed system payment instruments (iii) Semi-Open system payment instruments and (iv) Open system payment instruments.
2.4 Closed System Payment Instruments: These are payment instruments generally issued by business establishments for use at their respective establishment only. These instruments do not permit cash withdrawal or redemption.

2.5 Semi-Closed System Payment Instruments: These are payment instruments which are redeemable at a group of clearly identified merchant locations/establishments which contract specifically with the issuer to accept the payment instrument. These instruments do not permit cash withdrawal or redemption by the holder.

2.6 Semi-open System Payment Instruments: These are payment instruments which can be used for purchase of goods and services at any card accepting merchant locations (Point of sale terminals). These instruments do not permit cash withdrawal or redemption by the holder.

2.8 Mobile Prepaid Instruments: The prepaid talk time issued by mobile service providers. This value of talk time can also be used for purchase of 'value added service' from the mobile service provider or third-party service providers.

2.9 Net Owned Funds: For the purpose of these guidelines "Net owned Fund" (NOF) will consist of paid up equity capital, free reserves, balance in share premium account and capital reserves representing surplus arising out of sale proceeds of assets but not reserves created by revaluation of assets. From the aggregate of items will be deducted accumulated loss balance and book value of intangible assets, if any, to arrive at net owned funds. The NOF should be computed on the basis of last audited Balance Sheet and any capital raised after the Balance Sheet date should not be accounted for while computing NOF.

3. Eligibility

3.1 Banks and Non-Bank Finance Companies (NBFC), who comply with the eligibility criteria, would be permitted issue all categories of prepaid payment instruments.

3.2 Only banks which have been permitted to provide Mobile Banking Transactions by the Reserve Bank of India shall be permitted to launch mobile based prepaid payment instruments (mobile wallets & mobile accounts).

3.3 Other entities would be permitted to issue only closed system prepaid payment instruments and semi-closed system prepaid payment instruments.

3.4 Mobile Prepaid value: Mobile Service Providers are permitted to issue mobile prepaid value. In addition to talk-value the use of such prepaid value as a payment instrument shall be restricted to the purchase of only such value added digital contents/services which are for use on the mobile phones. The use of mobile prepaid value for purchase of other goods and services shall not be permitted.
4. Exemption

4.1 Entities issuing closed system Prepaid payment instruments are exempted from the purview of the guidelines and need not seek authorization from Reserve Bank of India, for issuance of such payment instruments subject to the following:
   i. A closed system payment instrument shall have a maximum value of Rs 5000/- only.
   ii. These instruments cannot be used for purchase of another prepaid payment instrument.
   iii. Amounts collected under the scheme shall be exempt from the provisions of paragraph 7 below, provided the value of outstanding instruments does not exceed Rs 50 lakhs or 10% of the issuers' 'net owned funds', whichever is lower.
   iv. Entities issuing such instruments shall inform Reserve Bank of India when they start operating such schemes.
   v. Half yearly audited statement shall be submitted to the Reserve Bank by such entities indicating the total value of instruments issued during the period and the value outstanding as at the end of the period. It shall be accompanied by a certificate from the Statutory Auditors stating that the company complies with the provisions of paragraph 4.1(iii) above.

4.2 Foreign Exchange Prepaid Payment Instruments: Entities authorized under FEMA to issue foreign exchange prepaid payment instruments are exempt from the purview of these guidelines. The use of such payment instruments shall be limited to permissible current account transactions and subject to the prescribed limits under the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

4.3 Mobile Prepaid Instrument: Mobile Prepaid Instruments are exempt from purview of the guidelines, subject to the following conditions:
   i. In addition to talk time-value the use of such prepaid instrument shall be restricted to the purchase of only such value added digital contents/services which are for use on the mobile phones.
   ii. The use of mobile prepaid instruments for purchase of any other goods or services shall not be permitted.
   iii. Encashment of such prepaid instruments shall not be permitted.

5. Capital requirements

5.1 Only banks and Non-Bank Finance Companies complying with the Capital Adequacy requirement prescribed by Reserve Bank of India from time-to-time shall be permitted to issue prepaid payment instruments.

5.2 All other entities shall have minimum net owned funds of Rs 10 lakhs.
6. Safeguards against money laundering KYC/AML/CFT provisions

6.1 The guidelines on Know Your Customer/Anti-Money Laundering/Combating Financing of Terrorism guidelines issued by the Reserve Bank of India to banks, from time to time, shall apply mutatis mutandi to all entities issuing prepaid payment instruments. Necessary systems shall be put in place to ensure compliance with these guidelines.

6.2 The use of prepaid payment instruments for cross border transactions shall not be permitted except for the payment instruments provided at paragraph 4.2 of the guidelines.

6.3 The maximum value of any prepaid payment instrument (where specific limits have not been prescribed) shall not exceed Rs 50,000/-. 

6.4 Exemption/relaxation form the provision of KYC requirements are available only in the following cases:-

i. Semi-Closed System Payment Instruments up to Rs 1000/- may be issued without any KYC subject to reporting of annual turnover/suspicious transactions. The issuer should ensure that, under no circumstance, more than one card is issued to the same person.

ii. Prepaid payment instruments up to Rs 5000/- can be issued by accepting any 'Government issued Identity Cards' as proof of identity. Such instruments shall not permit cash withdrawal.

iii. Semi-closed Prepaid payment instruments which permit only payment of utility bills/essential services up to a limit of Rs 10,000/- can be issued without any KYC being undertaken by the issuer. The entities issuing such instrument may ensure that these instruments are made acceptable only at institutions which maintain the identity of the customers. The utility bills/essential services shall include only Electricity bills, water bills, telephone/mobile phone bills, and insurance premium, cooking gas payments, ISP for Internet/Broadband Connections, Cable/DTH subscriptions and Citizen Services by Government or Government bodies.

iv. Entities issuing prepaid payment instruments to institutions/companies for further issuance by these institutions/companies to their employees or other beneficiaries may ensure that these institutions/companies maintain the full details of the employees or beneficiaries to whom such payment instruments are issued. The value of individual payment instrument shall not exceed Rs 5000/-. Such instruments shall not permit cash withdrawal.

6.5 Entities issuing prepaid payment instruments shall maintain a log of all the transaction undertaken using these instruments. These data should be available for scrutiny by the Reserve Bank or any other agency / agencies as may be advised by the Reserve Bank. These entities should also file Suspicious Transaction Report (STR) to Financial Intelligence Unit – India (FIU-IND).

7. Deployment of Money collected
7.1 The outstanding amount (float money) at a point of time could be substantial. Further, the turnover of funds may also be rapid. The confidence of public and merchant establishments on prepaid instrument schemes depends on the timely settlement of claims arising from use of such instruments. To ensure timely settlement, the issuers shall invest the funds collected only as provided here-in.

7.2 For schemes operated by banks and non-bank financial companies, the outstanding balances shall be part of the net demand and time liabilities for the purpose of maintenance of reserve requirements. This position will be computed on the basis of the balances appearing in the books of the bank as on the date of reporting.

7.3 Other entities issuing payment instruments (except those exempted from the purview of the guidelines) are permitted to maintain their outstanding balance in an escrow account with any scheduled commercial bank subject to the following conditions:
   i. NO interest is payable by the bank on such balances.
   ii. A quarterly certificate from the auditors shall be submitted certifying, the entity has been maintaining adequate balances in the account to cover the outstanding volume of payment instruments issued.
   iii. The entity shall also submit an annual certificate, as above, coinciding with the accounting year of the entity to the Reserve Bank of India.
   iv. Adequate records indicating the daily position of the value of instruments outstanding vis-à-vis balances maintained with the banks in the escrow accounts shall be made available for the scrutiny to the Reserve Bank or the bank where the account is maintained on demand.

7.4 As an exception to the above, an entity can enter into agreement with the bank where escrow account is maintained, to transfer "core portion", of the amount in the escrow account to separate account on which interest is payable, subject to the following:
   i. The bank shall satisfy itself that the amount deposited represents the "core portion" after due verification of necessary documents.
   ii. The amount shall be linked to the escrow account, i.e. the amounts held in the interest bearing account shall be available to the bank, to meet payment requirements of the entity, in case of any shortfall in the escrow account.
   iii. This facility is permissible to entities who have been in business for at least ONE YEAR and whose accounts have been duly audited for the full accounting year.
   iv. NO LOAN is permissible against such deposits. Banks shall not issue any deposit receipts or mark any lien for the amount held in such form of deposits.

8. Issuance and reloading of Prepaid Payment Instruments

8.1 All entities issuing prepaid payment instruments are permitted to issue reloadable or non-reloadable prepaid payment instruments.
8.2 Reloading of closed system payment instruments would be permitted at the retail agents and issuers outlets against cash/debit cards/credit card.

8.3 Banks and NBFCs are permitted to issue and reload such payment instrument at their branches against payment by cash/debit to bank account/credit card. Banks are permitted to issue and reload of such payment instruments through their business correspondents appointed as per the guidelines in this regard issued by the Reserve Bank.

9. Validity

9.1 All prepaid payment instrument issued in the country shall have a minimum validity period of six months from the date of activation/issuance to the holder.

9.2 In the case of non-reloadable prepaid payment instruments, the transfer of outstanding amount at the expiry of the payment instrument to a new similar payment instrument of the same issuer, purchased by the holder may permitted.

9.3 The outstanding balances in any payment instrument shall not be terminated immediately at expiration, of the instrument. The value may be depleted at the rate of 10 percent of the outstanding value per month. The holders may also be adequately cautioned in advance as regards the expiry of the validity of the payment instrument.

10. Redemption

10.1 The issuers of such instruments shall not dishonor customer instructions for payments/transfers of money, at approved locations, if there is sufficient balance outstanding against the instrument.

10.2 The holders of prepaid payment systems other than open-system payment instruments shall also be permitted to redeem the balance outstanding within the expiry date, if for any reason, the scheme is being wound-up or directed by the Reserve Bank to be discontinued.

10.3 Where redemption is provided as at 10.2 above, the redemption value shall not be in excess of the amount outstanding or the face value (loading limit) for the instrument.

11. Fraud prevention and Security standards

11.1 The prepaid payment instruments issuers shall put in place adequate information and data security infrastructure, and systems for prevention and detection of frauds. It is advisable to build a centralized database to prevent multiple purchase of payment instruments at different locations, leading to circumvention of limits if any prescribed for such payment instruments.
12. Customer Protection Issue

12.1 All Prepaid payment instruments issuers shall disclose all important terms and conditions in clear and simple language (preferably in English, Hindi and the local language) comprehensible to the instrument holder while issuing the instruments. These disclosures shall include:

i. All charges and fees associated with the use of the instrument.
ii. The expiry period and the terms and conditions pertaining to expiration of the instrument.
iii. The customer service telephone number and website URL.

12.2 A effective mechanism for redressal of customer complaints shall be put in place by the entity issuing prepaid payment instruments.