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CS Update

July 15, 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 ICS1





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PRESS RELEASE -12th NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARIES

July 14, 2011

Chief of Business Bureau

PRESS RELEASE

Mrs. Vimla Yadav, Member (Technical), Company Law Board inaugurates 12th National Conference of Practising Company Secretaries at Ooty, Tamil Nadu.

The Institute of Company Secretaries of India (ICSI) is organising the 12th National Conference of Practising Company Secretaries, on "PCS: Strategic Options in the New Decade" on 14th- 15th- 16th July, 2011, at Ooty.

Company Secretaries are and shall be the professionals responsible to give the Country good Corporate Governance, said Ms. Vimla Yadav, Officiating Chairperson, Company Law Board while inaugurating the 12th National Conference of Practising Company Secretaries today at Ooty.

Company Secretaries are and shall be the professionals responsible to give the Country good Corporate Governance, said Ms. Vimla Yadav, Officiating Chairperson, Company Law Board while inaugurating the 12th National Conference of Practising Company Secretaries today at Ooty.

It is time that Company Secretaries realize their responsibility towards the corporates. Opportunities for professionals are immense due to globalization of the economies. XBRL has been introduced in a small way by the MCA by making it mandatory for a limited number of companies but it is going to be the order of the day in the near future. Time has come when Company Secretaries need to focus on the assignments they wish to take up. They need to identify their core areas and focus on such areas. The professionals involvement is required in various activities, which casts upon them a great responsibility. The Company Law Board is soon going to allow for e-filing of documents and company secretaries have to build up their capacities by having practical and procedural knowledge.

Mrs. Nupur Mitra, Executive Director, Indian Overseas Bank, Guest of Honour at the inaugural session in her address said that increasing competition is opening up the doors of the global economies for Indian professionals and Company Secretaries are the appropriate and competent persons to guide the corporates. Company Secretaries are the conscience keepers of the company and have to ensure Corporate Governance in all Corporate functions.



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Speaking of the opportunities for Company Secretaries, Mrs. Nupur Mitra said that the opportunities that the markets are throwing before professionals are emerging out of technological changes such as evoting, eservice of documents, etc. Company secretaries have the responsibility to guide corporate India towards proper compliance. The implementation of IFRS and Direct Tax Code have lot of opportunities and the CS can play a role in guiding the corproates.

Shri Anil Murarka, President, the ICSI said in his address that the integration of world economy and technology advancement has necessitated the professionals to be more aware of the professional options before them and the influence of emerging technology on their profession and to develop competencies accordingly. This is an on going and continuous process for professionals like Company Secretaries.

Speaking about various initiatives of the Institute he explained in detail **the process of formulation of ICSI Vision 2020 the exposure draft of which was released in the Inaugural session.** He also informed about the 10 goals the Council of the Institute adopted for the years 2011-14 to work on for the over all growth and development of the profession. The other initiatives he informed include PMQ Courses, investor awareness programmes, corporate governance week, international secretarial standards.

Shri Nesar Ahmad, Vice President, the ICSI informed about various initiatives of the Institute both domestic and global towards capacity building of the profession and its members, such as Chartered Secretaries International Association (CSIA), WTO / GATTs etc. He also spoke at length about reforms process initiated by Ministry of Corporate Affairs and how the Company Secretaries can take benefit of this reform process.

Shri R Sridharan, Council Member, ICSI and Programme Director while delivering the welcome address said that technology has been influencing professions in positive way. Though it involves initial phase of learning the technology by professionals. IFRS convergence, XBRL Taxonomy, Electronic meeting, Electronic voting etc are the remarkable initiatives of MCA towards this direction. Stakeholders of corporates are going to be benefitted majorly by this initiatives in addition preservation of environment. He also spoke about the green initiatives.

Shri Umesh H Ved, Council Member and Chairman, Practicing Company Secretaries Committee introduced the theme of the 12th National Conference of Practicing Company Secretaries. In his address he explained the changing paradigm and the emerging role of company secretaries and in this context he informed that the theme PCS: Strategic Options in the New Decade has been chosen.

Shri B Ravi, Chairman, SIRC of ICSI and Programme Co-ordinator introduced the dignitaries on the Dais.

Shri N K Jain, Secretary & Chief Executive Officer of the ICSI in his concluding remarks said that, "When we talk about strategic options in new decade, we essentially talk about opportunities and attendant challenges being unfold in the present and our capacity to look beyond. When we look into future, the present become guiding factor and expectations of stakeholders provide impetus for formulating strategies. To master or thrive on changing dynamic world, we need to embrace perpetual growth and development through continuous learning, and constant improvement in the areas where we practice, so that the options available



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before us are strategically utilized”, he emphasized. The sustainability, technological advancements would be issues in the next decade where the Company Secretaries profession would be required to focus attention, as opportunity and the challenge as well, emphasized Shri N K Jain.

Around 400 delegates including Managing Directors, CEOs, Directors, Executive Directors, Senior Executives, practising professionals in secretarial, financial, legal and management disciplines including Company Secretaries are participating in the Conference .There will be deliberations on the following themes in Five Technical Sessions at the three day conference:

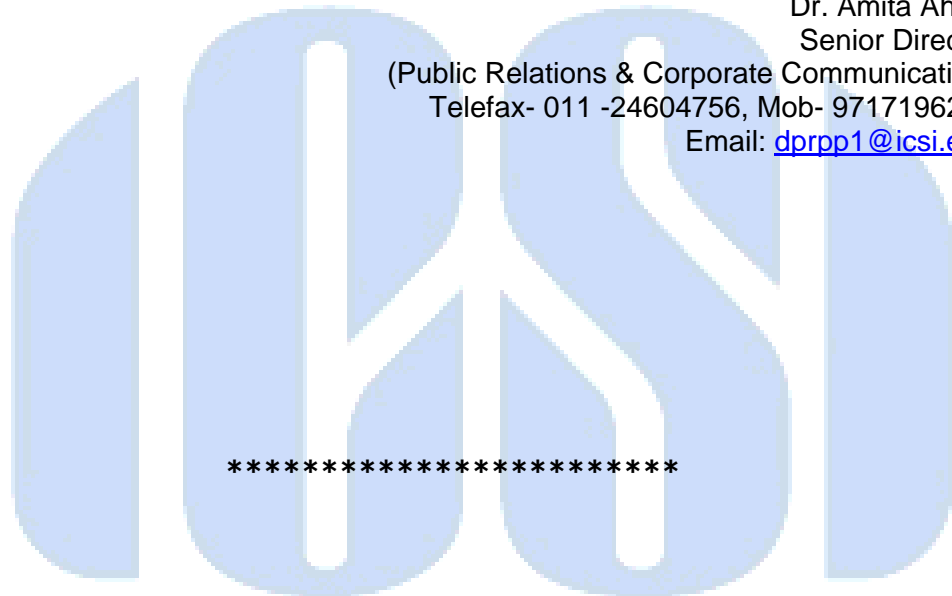
- a) Recent Turnaround Initiatives by MCA - Role of CS
- b) Corporate Governance, CSR and Sustainability Reporting
- c) Appearances before Tribunals / Quasi-Judicial Authorities
- d) Capital Market and Investment-Professional Opportunities
- e) Emerging Opportunities in SMEs

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39th NATIONAL CONVENTION OF COMPANY SECRETARIES



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

39th NATIONAL CONVENTION OF COMPANY SECRETARIES

DATES

October 13-14-15, 2011

VENUE

Jaypee Palace Hotel & Convention Centre, Agra

THEME

CORPORATE DYNAMISM AND INNOVATIVE PROFESSIONALISM

SUB THEMES

- I. Dynamic Business Environment, Innovation and Risk Management
- II. Regulatory Convergence, Technology and Innovative Professionalism
- III. From Compliances to Creative Solutions – Vision 2020 Challenges
- IV. Leveraging Globalisation for Trade in Professional Services
- V. Harmonisation of Companies Bill, 2009 *vis-à-vis* other Corporate Laws

PAPERS FOR DISCUSSION

Members who wish to contribute papers for publication in the souvenir or for circulation at the Convention are requested to send the same preferably through email [sudhir.dixit@icsi.edu] (with one hard copy to Dr. S K Dixit, Director (Academics), The Institute of Company Secretaries of India, 22, Institutional Area, Lodi Road, New Delhi 110003) on or before September 10, 2011. The paper should not normally exceed 15 typed pages. The Articles Screening Committee will consider the articles so received and the decision of the Institute based on the recommendations of the Screening Committee will be final in all respects. An honorarium of Rs. 2,500 will be paid by the Institute for each paper selected for publication in the souvenir or circulation at the Convention.

Please visit the website of the Institute www.icsi.edu for Delegate Fee, Hotel/Advertisement Tariff and Registration Procedure on or after July 15, 2011.



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ICSI-CCGRT PROGRAMME ON XBRL



**THE INSTITUTE OF
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CENTRE FOR
CORPORATE
GOVERNANCE,
RESEARCH &
TRAINING (CCGRT)

PCH - 4

Program on eXtensible Business Reporting Language (XBRL)

Introduction and Objective	<p>The Ministry of Corporate Affairs vide its General Circular No. 09/2011 dated 31.03.2011, amended vide General Circular No. 37/2011 dated 07.06.2011 and 43/2011 dated 07.07.2011 has mandated certain class of companies to file balance sheets & profit and loss account in respect of financial statements closing on or after 31.03.2011 by using XBRL taxonomy based on the existing Schedule VI and Accounting Standards notified under Companies (Accounting Standard) Rules, 2006.</p> <p>MCA portal is expected to have XBRL filing module by July 2011.</p> <p>ICSI-CCGRT is organising this program particularly for the benefit of its Members to acquaint them with the intricacies and practical aspects involved in XBRL filing.</p>	
Day, Date & Timing	Sunday, July 24, 2011	09.30 a.m to 05.30 p.m with lunch and background material
Venue	A/C Conference Hall of ICSI-CCGRT, Plot No. 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614	
Proposed Coverage	<ul style="list-style-type: none"> • Introduction to XBRL filing • Concept of XBRL Reporting • Demonstration of Web Forms XBRL filing 	
Speakers include	<p>Shri S. Swaminathan Founder & CEO IRIS Business Services Ltd & team from IRIS Business Services</p>	
Participant Mix	Primarily Company Secretaries	
Fees	Members ICSI	Rs. 2000/- per participant
	Others	Rs. 2500/- per participant
	Annual Members of CCGRT	Rs. 1000/- per participant
	Fees includes the cost of program kit, lunch, background material and other organisational expenses.	

Note : The program will be conducted by IRIS Business Services Ltd.

For Prior registration : Fee may be paid by local cheque/DD payable at Mumbai in favour of "ICSI-CCGRT A/c" sent to: Shri Gopal Chalam, Dean, ICSI-CCRT, Plot No. 101, Sector – 15, Institutional Area, CBD Belapur, Navi Mumbai – 400 614, Ph : 022-27577814/15, 022- 4102 1515 email : ccgrt.icsi@gmail.com, ccgrt@icsi.edu



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ICSI Celebrates Corporate Governance Week

August 8-12, 2011

The Institute of Company Secretaries of India (ICSI) is one of the first professional bodies in India to initiate discussion on "Corporate Governance" in the light of Cadbury Committee Report in the year 1997. The Institute has taken several initiatives on corporate governance including ICSI National Award for Excellence in Corporate Governance; ICSI Life Time Achievement Award for Translating Excellence in Corporate Governance into Reality; Issuance of Secretarial Standards to harmonise diverse Corporate Secretarial Practices; Post Membership Qualification (PMQ) Course in Corporate Governance; Directors Development Programmes; International Conferences on Corporate Governance; Investor Education and Awareness Programmes; as well as Joint Programmes with OECD, GCCF (IFC - Washington), INSOL International, Cass Business School (London), ICSA Singapore, ICSA Malaysia, CISI, CMDA (Maldives), etc. for furthering the cause of corporate governance.

CORPORATE GOVERNANCE WEEK

Furthering the cause of good governance amongst corporate India, the Institute has decided to observe "ICSI Corporate Governance Week", as an Annual Event.

This year the week will be celebrated from August 8-12, 2011. It is proposed to organise programmes corporate governance, sustainability, ethics and integrity, risk management, Non-Financial Disclosures, Carbon Foot Prints, and Good Corporate Citizenship as well as furthering "Go Green" initiatives throughout the length and breadth of the country.

CORPORATE GOVERNANCE CONCLAVE

The celebrations of the Corporate Governance Week shall culminate into Corporate Governance Conclave. Besides building awareness, the Conclave would provide insights into the various facets of the corporate governance which have assumed significance in the changing business landscape and need the attention from governance professionals, industry leaders, academia, students and others.

THEME

"Integrating Sustainability into Corporate DNA"

Day & Date : Friday August 12, 2011

Venue : New Delhi

Faculty: Corporate Captains, learned professionals, global experts in Corporate Governance will enlighten participants on various intricate issues of Corporate Governance.

PCH - Members attending conclave will be awarded two PCH.

Knowledge Partners :



All are cordially invited to attend and participate in the Corporate Governance Week activities and Corporate Governance Conclave.



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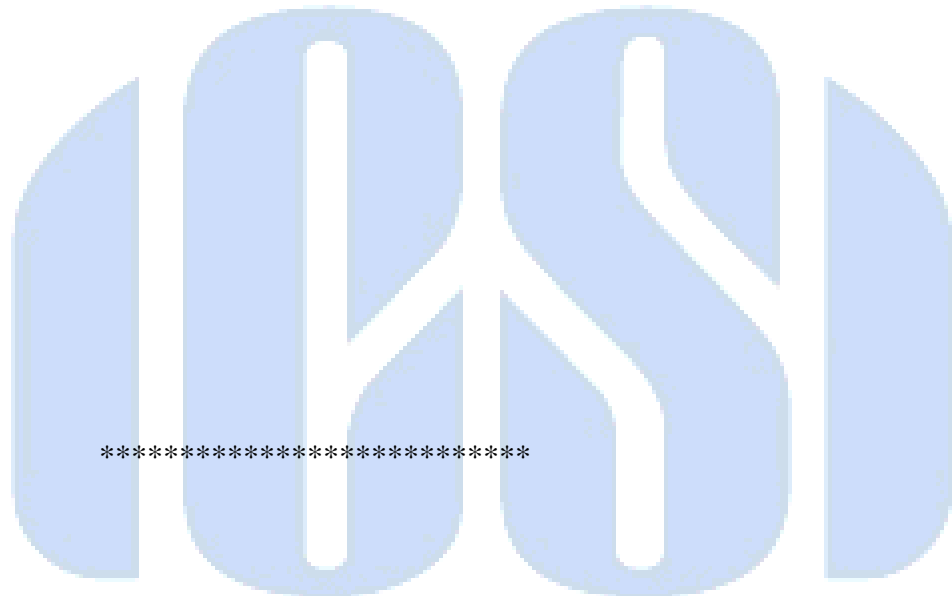


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RECORDING OF WEBCAST ON XBRL ARRANGED BY ICSI

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





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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. Public Consultation on the Proposed Revisions to the Code of Corporate Governance—Singapore—14 June 2011

Corporate Governance Council ("Council") which was set up by the Monetary Authority of Singapore to review the existing Code of Corporate Governance 2005 has released the proposed revisions to the Code for public consultation on 14th June 2011.

Proposed revision aims to promote a high standard of corporate governance among listed companies in Singapore. This effort is critical to maintaining investor confidence, and to enhance Singapore's reputation as a leading and trusted international financial centre. They shall apply to Singapore listed companies on a 'comply or explain' basis.

The key proposals set out in the consultation paper are made in the areas of director independence, board composition, director training, multiple directorships, alternate directors, remuneration practices and disclosures, risk management, as well as shareholder rights and role.

The Council has invited views and comments on the proposals made in the paper and the draft amendments to the revised Code by 31 July 2011.

The consultation paper on proposed revisions to the Code of Corporate Governance of Singapore can be accessed at:

http://www.mas.gov.sg/news_room/press_releases/2011

2. OECD Guidelines for Multinational Enterprises -- Recommendations for Responsible Business Conduct in a Global Context -- 24 May 2011

An update of earlier guidelines "The OECD Guidelines for Multinational Enterprises" were issued by OECD after due consultations with government of various adhering nations on 24 May 2011.

The updated version contains recommendations for responsible business conduct that various adhering governments encourage their enterprises to observe wherever they operate.

The Guidelines aim to ensure that the operations of multinational enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.

The Guidelines provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the Guidelines by enterprises is voluntary and not legally enforceable.



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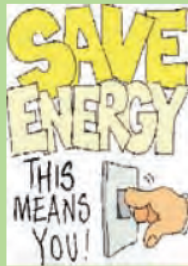


The updated guidelines can be accessed at:

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

GREEN CORNER

GREEN INDIA



- Turn off the lights when not in use;
- Take advantage of daylight by using light-colored, loose-weave curtains on your windows to allow daylight to penetrate the room;
- Turn off your home office equipment when not in use. A computer that runs 24 hours a day, for instance, uses - more power than an energy-efficient refrigerator;
- If your computer must be left on, turn off the monitor; this device alone uses more than half the system's energy;
- Battery chargers, such as those for laptops, cell phones and digital cameras, draw power whenever they are plugged in. Pull the plug and save;
- Prefer air conditioners having automatic temperature cut off.

SAVE ENERGY

Something Good

UNESCO World Heritage Committee (WHC), has decided to remove Manas National Park, Assam, from the "List of World Heritage Sites in Danger". The decision was announced during the 35th Session of the WHC in Paris (19-29th June 2011). This makes Manas the only site out of sixteen world heritage sites in this category, to be taken off the list. The UNESCO-IUCN Reactive Monitoring Mission which visited Manas in January this year took the decision. Members of the visiting mission were impressed to see the range of species and habitat management restoration activities at the site, including the re-habitation of the Indian one-horned rhinoceros. The WHC said, significant improvements in the preservation and restoration of the park, and maintaining the 'Outstanding Universal Values (OUVs)' of the site, were the key factors in the decision.

To Remember:

July 11 – World Population Day

Quote of the Month

"Let every individual and institution now think and act as a responsible trustee of Earth, seeking choices in ecology, economics and ethics that will provide a sustainable future, eliminate pollution, poverty and violence, awaken the wonder of life and foster peaceful progress in the human adventure."

— John McConnell, founder of International Earth Day

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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DRAFT PUBLIC COMPANIES (TERMS OF ISSUE OF DEBENTURE AND OF RAISING OF LOANS WITH OPTION TO CONVERT SUCH DEBENTURES OR LOANS IN TO SHARES) RULES, 2011

No 2/8/2011-CL.V
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated: 13.07.2011

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

Subject : Draft Public Companies (Terms of Issue of debenture and of raising of loans with option to convert such debentures or loans in to shares) Rules, 2011

Sir,

The Ministry of Corporate Affairs is considering to revise the Public Companies (Terms of Issue of debenture and of raising of loans with option to convert such debentures or loans in to shares) Rules, 1977 to sort out the difficulties being faced by the lenders while converting debentures or loans to companies in to shares as per existing rule.

You are requested to examine the draft rule and furnish your comments / recommendations to the Ministry latest by 29th July, 2011 by e-mail on the following e-mail addresses.

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

Yours faithfully,
(Monika Gupta)
Assistant Director





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DRAFT NOTIFICATION

[TO BE PUBLISHED IN THE GAZETTE OF INDIA PART II, SECTION 3, SUB SECTION (i), EXTRAORDINARY]

GOVERNMENT OF INDIA
Ministry of Corporate Affairs

Notification

New Delhi the _____ 2011

G.S.R. (E). – In exercise of the powers conferred by section 642 read with clause (a) of the proviso to sub-section (3) of section 81 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, in supercession of companies Public Companies (Terms of Issue of Debentures and Raising of Loans with Option to Convert such Debentures or Loans into Shares) Rules, 1977 namely:-

1. Short Title and Commencement:

(1) These rules may be called the Public Companies (Terms of Issue of debenture and of raising of loans with option to convert such debentures or loans in to shares) Rules, 2011.

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

2. Definitions:

In these rules, unless the context otherwise requires:-

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

(b) "Public financial institution " means-

(i) any of the financial institution specified in sub- section (1) of Section 4 A of the Act

(ii) any of the other institutions specified by the Central Government to be public financial institutions under sub-section (2) of the said section 4A.

(c) "Bank" means a bank approved by the Reserve Bank of India and includes foreign banks approved by the regulator of that country.

3. Particulars regarding the terms of issue of debentures or the terms of raising of loans by a public company:

The terms of issue of debentures or the terms of raising of loans by a public company which include a term providing for an option to convert such debentures or loans or any part thereof into shares in the company or to subscribe for shares in the company shall not require the approval of the Central Government under clause (a) of the proviso to sub-section (3) of



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section 81 of the Act, if such terms confirm to the following requirements, namely:-

(a) the debentures or loans may be issued or raised either through private subscription or through the issue of a prospectus to the public ;

(b) a public financial institution either underwrites or subscribes to or sanctions the whole or part of the issue of debentures or the raising of loans, as the case may be ;

(c) when and where necessary, the consent of the Securities and Exchange Board of India (SEBI) constituted under the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), is obtained for the issue of shares consequent upon the conversion of debentures of loans into equity capital ;

(d) having regard to the financial position of the company the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or loans, the capital of the company, its loans, liabilities, its reserves, its profits during the immediately preceding five years and the current market price of the shares of the company, as may be applicable, the financial institutions provide for the terms including the term providing for an option to convert such debentures or loans or any part thereof, into shares in the company or to subscribe shares for therein, :-

(i) in case of listed companies, at a price as per SEBI norms or with the prior approval of SEBI, as the case may be;

(ii) in case of un-listed company, having loan from or having debentures issued to a PFI or Bank, as per mutual agreement between the company and PFI or Bank;

(iii) in any other case, at par or at a premium not exceeding twenty five per cent of the face value of the shares.

Provided that a public financial institution or a bank shall not convert all or any part of such debentures or loans unless:-

(a) the company has issued the debentures or raised the loan has defaulted in the repayment/redemption of, or payment of interest on, such loans or debentures; and

(b) such bank or public financial institution has given the company notice of its intention to convert such loans or debentures at least 30 days prior to the intended date of conversion."

[F No 2/8/2011-CL.V]
J.N. Tikku,
Joint Director



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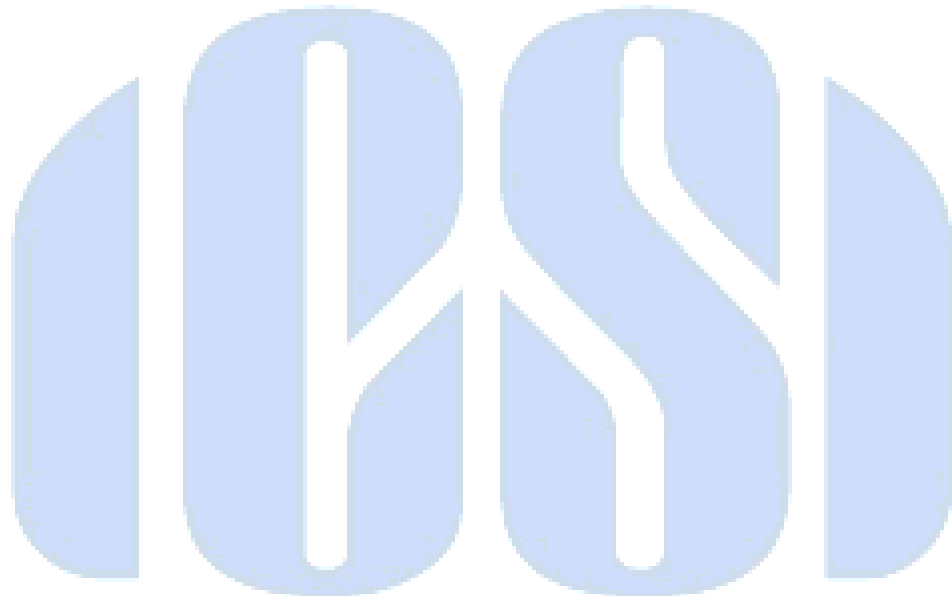
July 15, 2011



NATIONAL VOLUNTARY GUIDELINES ON SOCIAL, ENVIRONMENTAL & ECONOMIC RESPONSIBILITIES OF BUSINESS, 2011

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Details can be accessed at: http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf



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

[TO BE PUBLISHED IN THE GAZETTE OF INDIA PART II, SECTION 3, SUB SECTION (i), EXTRAORDINARY]

GOVERNMENT OF INDIA
Ministry of Corporate Affairs

Notification

New Delhi the 07.07.2011

G.S.R. (E). – In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956) and all other powers hereunto enabling the Central Government hereby makes the following rules, further to amend the Companies (Central Government's) General Rules and Forms, 1956 namely:-

1. Short title and commencement

(1) These rules may be called the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2011.

(2) They shall come into force with effect from the date of publication in the official Gazette.

2. The existing Rule 10C shall be substituted by the following Rule 10C:

[Rule 10C. (1) The total monthly remuneration for the purpose of clause (b) of sub-section (1) of section 314, shall not be less than rupees fifty thousand.

(2) The total monthly remuneration, for the purpose of sub-section (1B) of section 314, shall not be less than rupees two lakhs and fifty thousand.]

[F No 17/174/2011-CLV]

J.N. Tikku,
Joint Director

Note:- The Principal notification was published vide number G.S.R. 432 dated the 18th January, 1956 and last amended vide G.S.R. 408 (E) dated the 26th May, 2011.



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NAME AVAILABILITY GUIDELINES, 2011

General Circular No. 45/2011

No 17/90/2011- CL V
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated the 8th July, 2011

All the Regional Directors,
All the Registrar of Companies

Subject: **NAME AVAILABILITY GUIDELINES, 2011**

Sir,

In supercession of all the previous circulars and instructions issued by Ministry of Corporate Affairs from time to time regarding name availability, the applicants and Registrar of Companies are advised to adhere following guidelines while applying or approving a name:

1. As per provisions contained in Section 20 of the Companies Act, 1956, no company is to be registered with undesirable name. A proposed name is considered to be undesirable if it is identical with or too nearly resembling with:

(i) Name of a company in existence and names already approved by the Registrar of Companies;

(ii) Name of a LLP in existence or names already approved by Registrar of LLP; or

(iii) A registered trade-mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

2. While applying for a name in the prescribed e-form-1A, using Digital Signature Certificate (DSC), the applicant shall be required to furnish a declaration to the effect that:

(i) he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) respectively already registered or the names already approved.

(ii) the proposed name(s) is/are not infringing the registered trademarks or a trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;

(iii) the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;



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(iv) the proposed name(s) is not such that its use by the company will constitute an offence under any law for the time being in force.

v) the proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity;

(vi) he has gone through all the prescribed guidelines, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;

(vii) he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.

3. There is an option in the e-form 1A for certification by the practicing Chartered Accountants, Company Secretaries and Cost Accountants, who will certify that he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) respectively already registered or the names already approved and the search report is attached with the application form. The professional will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and also is in conformity with Name Availability Guidelines, 2011.

4(i) Where e-form 1A has been certified by the professional in the manner stated at '3' above, the name will be made available by the system online to the applicant without backend processing by the Registrar of Companies (ROC). This facility is not available for applications for change of name of existing companies.

(ii) Where a name has been made available online on the basis of certification of practicing professional in the manner stated above, if it is found later on that the name ought not to have been allowed under provisions of section 20 of the Companies Act read with these Guidelines, the professional shall also be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulations of respective professional Institutes.

(iii) Where e-form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

5. The name, if made available, is liable to be withdrawn anytime before registration of the company, if it is found later on that the name ought not to have been allowed. However, ROC will pass a specific order giving reasons for withdrawal of name, with an opportunity to the applicant of being heard, before withdrawal of such name.

6. The name, if made available to the applicant, shall be reserved for sixty days from the date of approval. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

7. Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.



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8. In determining whether a proposed name is identical with another, the following shall be disregarded:

(i) The words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(ii) The words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(iii) The plural version of any of the words appearing in the name;

(iv) The type and case of letters, spacing between letters and punctuation marks;

(v) Joining words together or separating the words, as this does not make a name distinguishable from a name that uses the similar, separated or joined words. Such as Ram Nath Enterprises Pvt. Ltd. will be considered as similar to Ramnath Enterprises Pvt. Ltd.;

(vi) The use of a different tense or number of the same word, as this does not distinguish one name from another. Such as, Excellent Industries will be similar to Excellence Industries and similarly Teen Murti Exports Pvt. Ltd. will be to Three Murti Exports Pvt. Ltd.;

(vii) Using different phonetic spellings or spelling variations, as this does not distinguish one name from another. For example, J.K. Industries limited is existing then J and K Industries or Jay Kay Industries or J n K Industries or J & K Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;

(viii) The addition of an internet related designation, such as .COM, .NET, .EDU, .GOV, .ORG, .IN, as this does not make a name distinguishable from another, even where (.) is written as 'dot';

(ix) The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc., as this does not make a name distinguishable from an existing name such as New Bata Shoe Company, Nav Bharat Electronic etc. Similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed. For example, 'Unique Marbles Delhi Limited' can not be allowed if 'Unique Marbles Limited' is already existing; Such names may be allowed only if no objection from the existing company by way of Board resolution is produced/ submitted;

(x) Different combination of the same words, as this does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" should not be allowed;

(xi) Exact Hindi translation of the name of an existing company in English especially an existing company with a reputation. For example, Hindustan Steel Industries Ltd. will not be allowed if there exists a company with name 'Hindustan Ispat Udyog Limited';

9. In addition to above, the user shall also adhere to following guidelines: --

(i) It is not necessary that the proposed name should be indicative of the main object.;



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ii) If the Company's main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: cooperative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

(iv) Abbreviated name such as 'BERD limited' or '23K limited' cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited, Hindustan Machine Tools limited to HMT limited) after following the requirement of Section 21 of the Companies Act, 1956. Further, if the name is only a general one like Cotton Textile Mills Ltd., or Silk Manufacturing Ltd., and not specific like Calcutta Cotton Textiles Mills Limited or Lakshmi Silk Manufacturing Company Limited, the same shall not be allowed;

(v) If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court under section 559 of the Act. Moreover, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 560 of the Act, then the same shall not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority;

(vi) If the proposed names include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective Act/ regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(vii) If the proposed name includes the word " State" , the same shall be allowed only in case the company is a government company. Also, if the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited, the same shall not be allowed;

(viii) If the proposed name contains any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central or any State Government under any law for the time in force, unless the previous approval of Central Government has been obtained for the use of any such word or expression;

(ix) If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(x) Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon;



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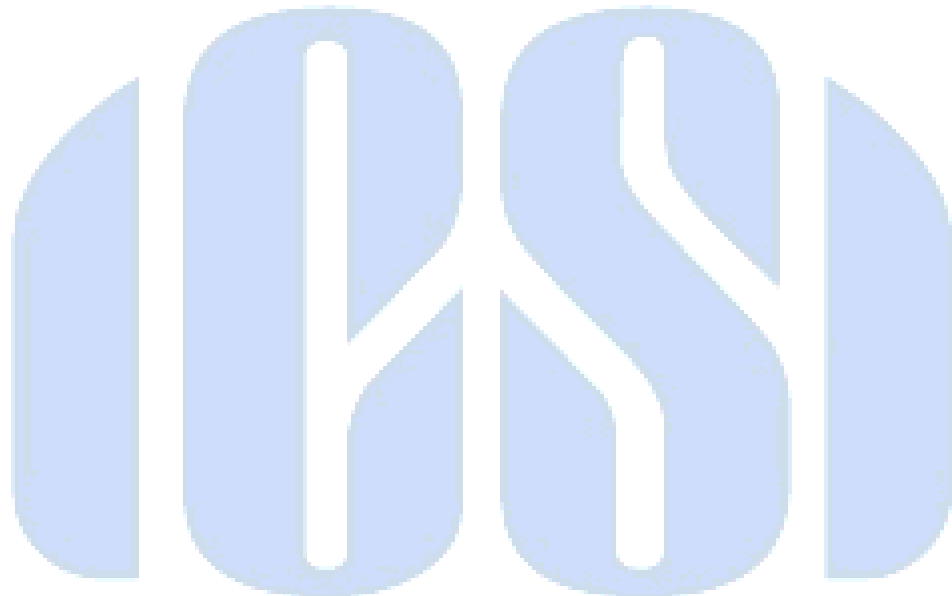
10. These guidelines and revised e-form 1A are likely to be implemented with effect from 24th July, 2011.

11. This issues with the approval of competent authority.

Yours faithfully,

-Sd/-

(Monika Gupta)
Assistant Director
Copy to: All concerned.





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INTEGRATION OF DIRECTOR'S IDENTIFICATION NUMBER (DIN) ISSUED UNDER COMPANIES ACT, 1956 WITH DESIGNATED PARTNERSHIP IDENTIFICATION NUMBER (DPIN) ISSUED UNDER LIMITED LIABILITY PARTNERSHIP (LLP) ACT, 2008

General Circular No. 44/2011

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

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated: 08.07.2011

To

All Regional Directors
All Registrar of Companies.
Registrar of Limited Liability Partnership

Sub: Integration of Director's Identification Number (DIN) issued under Companies Act, 1956 with Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership (LLP) Act, 2008

Sir,

The Ministry of Corporate Affairs has been issuing two separate identification numbers as DIN to an individual for becoming a director of a company under Companies Act, 1956 and DPIN for a designated partner in a Limited Liability Partnership under Limited Liability Partnership (LLP) Act, 2008.

2. To avoid this duplicity and to give ease to the stakeholders, the Ministry has decided to issue only one identification number to an individual for both the purpose.

3. Therefore, the Ministry, vide notification dated 5th July, 2011, has integrated the Director's Identification Number (DIN) issued under Companies Act, 1956 with Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership (LLP) Act, 2008 with effect from 9.7.2011.

4. Pursuant to this notification:-

(a) With effect from 9.7.2011, no fresh DPIN will be issued. Any person, who desires to become a designated partner in a Limited Liability Partnership, has to obtain DIN by filing e-form DIN-1.

(b) If a person has been allotted DIN, the said DIN shall also be used as DPIN for all purposes under Limited Liability Partnership Act, 2008.



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(c) If a person has been allotted DPIN, the said DPIN will also be used as DIN for all the purposes under Companies Act, 1956.

(d) If a person has been allotted both DIN and DPIN, his DPIN will stand cancelled and his DIN will be used as DIN as well as DPIN for all purposes under Limited Liability Partnership Act, 2008 and Companies Act, 1956.

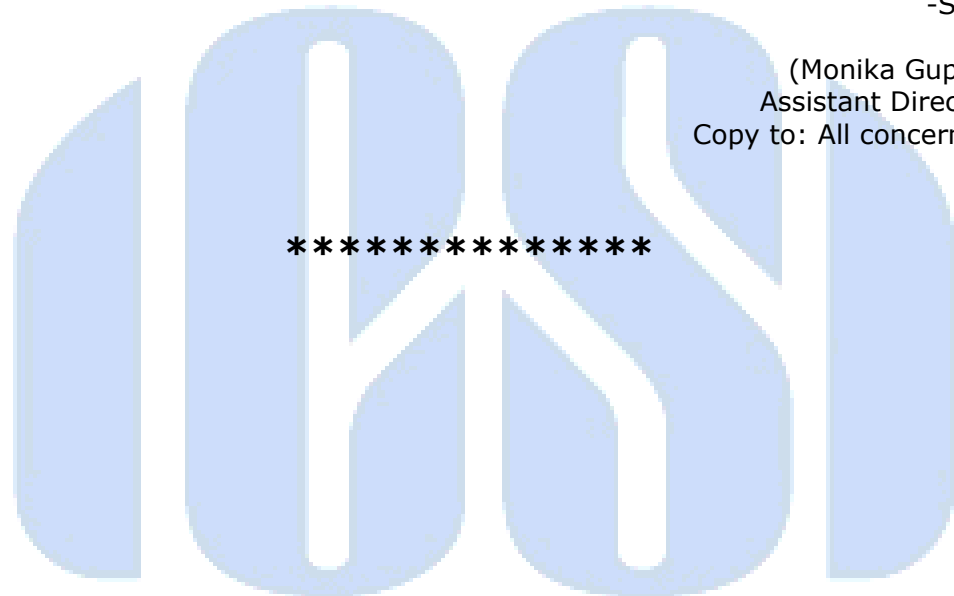
5. As per Circular no. 32/2011 dated 31.05.2011, the Ministry has made Income Tax Permanent Account Number (PAN) mandatory for obtaining DIN for Indian nationals. Further, all existing DIN holders, who have not furnished their PAN at the time of obtaining DIN, are required to furnish their PAN to the Ministry by filing e-form DIN-4 by 30th September, 2011.

6. Similarly, all DPIN holders, who had not furnished their PAN at the time of obtaining DPIN, are required to furnish their PAN to the Ministry by filing eform DIN-4 by 30th September, 2011, failing which their DPIN/DIN will be disabled and they will also be liable for heavy penalty.

Yours faithfully,

-Sd/-

(Monika Gupta)
Assistant Director
Copy to: All concerned







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COMPANIES DIRECTOR IDENTIFICATION NUMBER (THIRD AMENDMENT) RULES, 2011

In exercise of the powers conferred by clause (A) and (b) of sub-section (1) of section 642 read with sections 266A, 266B and 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby issues rules, further to amend the Companies (Director Identification Number) Rules, 2006 by a notification dated 5th July, 2011. These rules may be called the Companies Director Identification Number (Third Amendment) Rules, 2011 and they shall come into force with effect from 9th July, 2011.

Further details can be accessed at:

[http://mca.gov.in/Ministry/notification/pdf/GSR\(E\)_05july2011_1.pdf](http://mca.gov.in/Ministry/notification/pdf/GSR(E)_05july2011_1.pdf)





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LIMITED LIABILITY PARTNERSHIP RULES, 2009 (AMENDMENT) RULES, 2011

In exercise of the powers conferred by sub-section (1) and (2) of section 79 of limited Liability Partnership Act, 2008 (6 of 2009), the Central Government hereby issues rules, further to amend the Limited Liability Partnership Rules, 2009 by a notification dated 5th July, 2011. These rules may be called the Limited Liability Partnership Rules, 2009 (Amendment) Rules, 2011. They shall come into force with effect from 9th July, 2011.

Further details can be accessed at:

[http://mca.gov.in/Ministry/notification/pdf/GSR\(E\)_05july2011.pdf](http://mca.gov.in/Ministry/notification/pdf/GSR(E)_05july2011.pdf)





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FILING OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT IN EXTENSIBLE BUSINESS REPORTING LANGUAGE (XBRL) MODE

General Circular No. 43/

No. HQ/MCA/DigitisedBS/AR/2009

Government of India

Ministry of Corporate Affairs

5th Floor, "A" Wing, Shastri Bhawan,

Dr. R.P. Road, New Delhi – 110001

Dated 07-07-2011

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

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

Sir,

In partial modification to Para 2 of Ministry's Circular No. 26/2011 dated 18.05.2011, the filing on MCA 21 in the XBRL mode will be effective in respect of financial statements closing on or after 31.03.2011 instead of the year 2011-12.

2. Further, in continuation to the Circular no. 37/2011 dated 07.06.2011, the further information is given as under: --

(i) Besides signing by signatories as specified u/s 215 of the Companies Act, 1956, the Statutory Auditor has to certify the financial statements prepared in XBRL mode for filing on MCA-21 portal.

(ii) Phase-1 class of companies as per Circular 9/2011 dated 31.03.2011 and later exempted from XBRL filing (under Power sector, Insurance sector, NBFC and Banking sector) who are unable to file their financial statements would be exempted from additional fee due to delay in filing up to 30.09.2011.

3. This issue with approval of Competent Authority.

Yours faithfully,


(J.N. Tikku)
Joint Director



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E-FILING OF INCOME TAX RETURN IN RESPECT OF COMPANIES UNDER LIQUIDATION

GENERAL CIRCULAR NO. 41/2011

F. No. 51/19/2011/Insolvency
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110001
Dated 6th July 2011

To

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

Subject: E-filing of Income Tax return in respect of companies under liquidation.

The Official Liquidators have reported that they are facing problems in e-filing of Income Tax Returns in compliance as they are required to mention PAN No. of the person who files the return, representing the company in liquidation. In the Regional Directors Conference held on 16-6-2011 also, the Official Liquidators brought to the notice of the Ministry that they are not able to file Income Tax Returns since the verification part of the report require them to mention their personal PAN Card No. even when they file the Return as a representative assessee of the company (in liquidation). It was suggested that a PAN Card should be issued in the name of the office i.e. OL..... This PAN No. should be quoted in respect of all returns filed by him as OL. In this regard, Section 139A read with Form ITR-6 (Rule 12) of the Income Tax Act, 1961 were examined. According to Section 139A of Income Tax Act, 1961, PAN is a must for all assesses for his own income or other income exceeding Rs.5 lakhs. Companies are also required to obtain PAN as well as TAN. Since this IT provision is applicable from 1995 onwards, hence, all companies which have come into liquidation from 1995 onwards are expected to have the PAN No. After the winding up order is passed by High Court, while obtaining Statement of Affairs from the Directors and taking possession of company's rights such as Telephone, Electricity connection, Franking machines, Bank account. Official Liquidator should also take possession of PAN/TAN Numbers and Cards. In case the management fails to handover PAN/TAN Numbers and Cards, Official Liquidator should invoke Rule 130 of Companies (Court Rule) 1959 and obtain the PAN details from Ex-Directors/Officials. Alternatively, wherever no PAN is available, Official Liquidator should apply for PAN Card after his appointment, company-wise. Single PAN in the capacity of Official Liquidator may not be workable. Hence, Official Liquidator should obtain PAN Card for all the companies in liquidation with the approval of Company Judge and meet the expenses in obtaining the PAN Cards from respective company's accounts. However, most of the Official Liquidators have not filed the Income Tax Return because Income Tax Department insist for personal PAN details in the ITR Form.



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2. The matter was discussed with CBDT. It was explained from the CBDT side that IT Returns have been developed to enable all assessees to file the return and the Official Liquidators may quote PAN of the company as well as his personal PAN which is insisted for the purpose of identification of the person who has signed the Return. In order to avoid correspondence/notice issued to individual members, Official Liquidators should give their Office address in Part A-General Information against "address of the representative" column in all correspondence which reach his office. In the circumstances, Official Liquidators are advised to take the following action to avoid receipt of notices and correspondence from the IT Department at his personal address, instead of official address.

3. Thus, the following steps are proposed to be taken by Official Liquidators:-

- 1) To check whether the company which has come in liquidation has a PAN and takes possession along with other records.
- 2) If PAN is not available in the records, the PAN No. of the company shall be obtained from concerned ITO.
- 3) There are cases where no certificate of Registration and/or Article of Association/ Memorandum of Association are available. For this following action be taken:
 - (a) If the company has no assets, it must be got liquidated and there is no need to apply for PAN.
 - (b) If the company has assets, the concerned ROC be requested to send documents about the company for applying to concerned ITO for obtaining PAN.
- 4) In the verification column of the ITR, OL will mention his personal PAN as this is only for the purpose of Verification Number obtained in official designation.
- 5) As Representative Assessee, (OL) official address should be given in Part A General Information under column No.(b).i.e. address of Official Liquidator's office would be mentioned as the address of the company under Liquidation.
- 6) Since this is a regular activity, following actions be taken:
 - (a) Staff be trained to prepare and file application for PAN with outsourced agencies of CBDT namely NSDL and UTI;
 - (b) All IT Returns filing is now on-line. Hence staff be trained to do the same. No CA firms/consultants be employed for above tasks.

**(Jaikant Singh)
Director
06-07-2011**

Copy to DIT (RSP & OL), Mayur Bhawan, C.P., New Delhi.





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FAQS ON FAST TRACK EXIT (FTE) MODE

What is Fast Track Exit (FTE) Mode?

Ministry has issued Guidelines for "Fast Track Exit (FTE) Mode" to give opportunity to the defunct companies to get their names struck off from the register under Section 560 of the Companies Act, 1956 in time bound manner.

What is the date of implementation of these Guidelines?

The Guidelines will be implemented with effect from 3rd July, 2011.

What are the main criteria for making an application under FTE?

There are two main criteria:-

- The company applying under FTE should not have any asset and liability.
- The company should not have commenced any business activity or operation since incorporation or at least one year must have been passed since last business activity or operation.

Can a dormant company apply under FTE?

Yes, any company, which has been identified as dormant by the Ministry of Corporate Affairs, can apply under FTE. Such companies need not to file Form 61 for normalizing.

Can a company identified as defaulting company apply under FTE?

Any company, which has not filed its statutory documents i.e. Balance Sheet and Annual Return for any of the financial year 2006-07, 2007-08, 2008-09 and 2009-10, has been identified as defaulting company. Directors of such companies are debarred from filing any document till they make the default good. Such defaulting companies can apply under FTE.

Which are the companies to whom FTE is not applicable?

The guidelines does not inter-alia cover the listed companies, companies that have been de-listed due to non-compliance of listing agreement or any other statutory Laws, section 25 companies, vanishing companies, companies under inspection/investigation, companies against which prosecution for a non-compoundable offence is pending in court, companies having outstanding public deposits or secured loan or dues towards banks and financial institutions or any other Government Departments etc. or having management dispute or company in respect of which filing of documents have been stayed by court or CLB or Central Government or any other competent authority.

For details, kindly refer general circular number 36/2011 dated 7.6.2011 available on MCA portal www.mca.gov.in



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What is the procedure for making application for striking off the name under FTE?

The Company desirous to get its name struck off from the Register shall file an application in the prescribed Form FTE online with the Registrar. The form shall be accompanied with an affidavit, an indemnity bond, statement of account duly certified by a Chartered Accountant in practice or auditor of the company and copy of board resolution showing authorization for filing the form.

Is there any fee for filing Form FTE?

Yes, applicant is required to file an application in the prescribed Form FTE along with prescribed fee of Rs. 5,000/-

Who can sign Form FTE? Whether digital signature of authorised signatory of the company is a mandatory requirement for filing the Form FTE?

- In case there are active signatories of the company existing in the MCA21 system, then the Form shall have to be mandatorily digitally signed by the authorised signatory of the company.
- In case no active signatories are existing in the MCA 21 system, then a physical copy of the Form duly filled in, shall have to be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the Form. Such form will be uploaded by the practicing professional (i.e. CA/CS/CWA), who has certified the form.

In such case, the application shall be accompanied by certificate from a CA/CS/CWA in whole time practice alongwith their membership number, certifying that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN.

In all cases, certification by a practicing professional (i.e. CA/CS/CWA) is mandatory.

What will happen, if there is pending prosecution against the company and its directors?

If the pending prosecutions are only for non-filing of Annual Returns under section 159 and Balance Sheet under section 220 of the Act, such application may be accepted provided the applicants have already filed the compounding application. However, steps for final strike of the name of the company will be taken only after disposal of compounding application by the competent authority.

How the foreign nationals will get their Indemnity Bond and Affidavit notarized?

Foreign nationals and NRIs may get their Indemnity Bond and Affidavit notarized as per their respective country's law.



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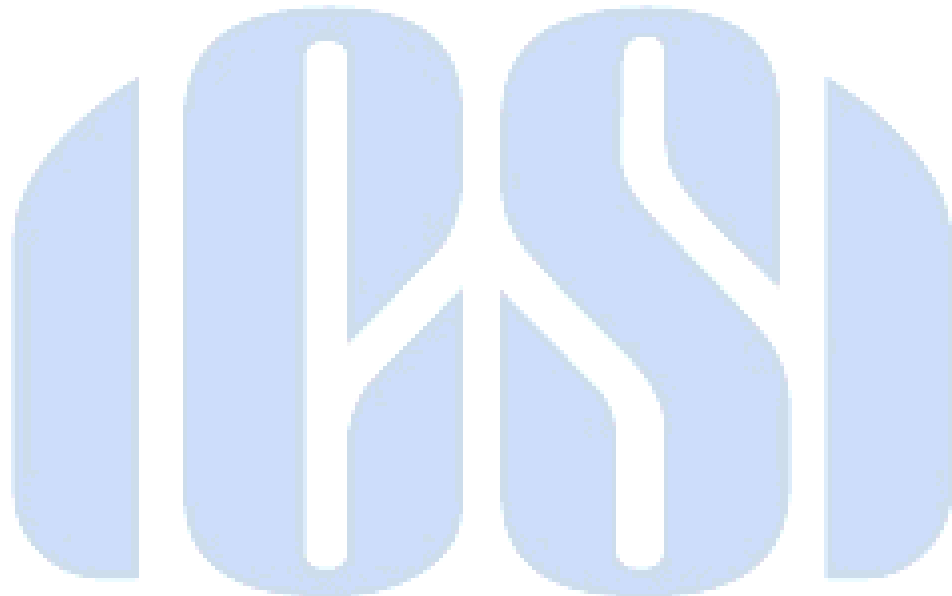
In case any stakeholder has any objections to the Striking off the name of any company from the Register, what shall be done in such case?

List of applications filed under FTE will be available on the portal. In case any stakeholder has any objections to the Striking off the name of any company, he/she may raise such objection by email/letter with the concerned ROC Office within 30 days from the date of filing Form FTE by the company.

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PROPOSED GUIDELINES FOR CONVERSION OF SECTION 25 COMPANY (NON PROFIT COMPANY) TO AN ORDINARY COMPANY UNDER COMPANIES ACT, 1956.

F.No.17/178/2011-CL-V
Government of India
Ministry of Corporate Affairs
CL V Section

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

Regional Directors,

All Registrar of Companies,

All Stakeholders

Sub : Proposed guidelines for conversion of section 25 company (non profit company) to an ordinary company under Companies Act, 1956.

Sir,

The Ministry has been receiving representation from various stakeholders to develop a procedure under Companies Act, 1956 for conversion of section 25 company (non-profit company) to an ordinary company because there are a number of section 25 companies which have not done any activity after obtaining license under section 25 or have stopped such activities, and now want to convert themselves as an ordinary company.

2. At present there is no specific provision under Companies Act, 1956, where a company can apply for conversion of a section 25 company (non profit company) to an ordinary company. The Central Government is however empowered under section

25(7) of the Companies Act, 1956 to revoke the license granted under section 25(1) or 25(3) of the Companies Act, 1956. This may tantamount as conversion of section 25 (non-profit) company to an ordinary company subject to certain conditions.

3. Section 25 companies, being a non profit organization/company normally receive contribution from all sections of the society in the form of donations, contributions, etc for the furtherance of the charitable, philanthropic activities or for such other useful objects. Such non profit companies sometime also enjoy special status and benefit from various authorities such as Income Tax, Commissioner of Charity, any organization of Central Government or State Government, Municipal Body or any other recognized authority.

4. The Companies Regulation, 1956 also provides for distribution of assets of such companies on winding up as under: --

"If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same



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bike, or use
public
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whenever
possible.**



**Keep vehicles
well
maintained.
Under-inflated
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reduce gas
mileage.**



shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, to be determined by the members of the company at or before the time of dissolution or in default thereof, by the High Court of Judicature that has or may acquire jurisdiction in the matter."

5. In the background of above provisions, the Ministry of Corporate Affairs is considering to prescribe following guidelines for conversion of a section 25 company to an ordinary company: --

I. A section 25 Company may apply to Registrar of Company in e-form 61 for its revocation of license under section 25 (7) of the Act. Such section 25 Company should satisfy following conditions: --

(a) The company should have passed a resolution in general meeting to convert itself into a non section 25 company which should have been approved by all members/shareholders of the company by adopting revised Memorandum and Articles of Association.

(b) The company has not commenced any activity or operation since its incorporation.

(c) The company has not received any donation, grants or contribution etc., other than from its members.

(d) Where the company has obtained any special status from any authority such as Income Tax, Commissioner of Charity or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority then a "No Objection Certificate" has to be obtained from the concerned authority.

(e) The existing assets, if any has to be transferred to a similar object company before converting it into a non-section 25 company.

(f) The company should have filed its all upto date Balance Sheets and Annual Returns.

(g) The Directors have to file an affidavit confirming above compliances/ status.

(h) A certificate from practicing Chartered Accountants/ Company Secretary/ Cost Accountant certifying the above status / compliances by the company.

II. On receipt of above documents and being satisfied, the Registrar of Companies can considered to revoke license in exercise of his power under section 25(7) of the Act on merits.

6. You are requested to examine the proposed guidelines and furnish your comments/recommendations to the Ministry by 15th July, 2011 by e-mail on following e-mail addresses.

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

Yours faithfully,
(Monica Gupta)
Assistant Director



CS Update

July 15, 2011



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PROPOSED GUIDELINES FOR STRIKE OFF NAME UNDER SECTION 560 OF THE COMPANIES ACT, 1956 OF COMPANIES (NON PROFIT COMPANIES) WHICH HAVE BEEN GRANTED LICENSE UNDER SECTION 25 OF THE COMPANIES ACT, 1956

F.No.17/178/2011-CL-V
Government of India
Ministry of Corporate Affairs
CL V Section

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

All Regional Directors,
All Registrar of Companies,
All Stakeholders

Sub : Proposed guidelines for strike off name under section 560 of the Companies Act, 1956 of companies (non profit companies) which have been granted license under section 25 of the Companies Act, 1956.

Sir,

The Ministry has been receiving representation from various stakeholders to develop a procedure for strike off name under section 560 of the Companies Act, 1956 of companies (non profit companies) which have been granted license under section 25 of the Companies Act, 1956. There are a number of section 25 companies which have not done any activity after obtaining license under section 25 or have stopped such activities, and now want to strike off their name under section 560 of the Companies Act, 1956.

2. At present Registrar of Companies are not taking action either suo-moto or on request of companies for striking off the name of section 25 companies (non profit companies) under section 560 of the Companies Act, 1956. The Ministry of Corporate Affairs has also not permitted for exit of section 25 companies under various exit schemes under section 560 of the Act announced by it from time to time.

3. Section 25 companies, being a non profit organization/company normally receive contribution from all sections of the society in the form of donations, contributions, etc for the furtherance of the charitable, philanthropic activities or for such other useful objects. Such non profit companies sometime also enjoy special status and benefit from various authorities such as Income Tax, Commissioner of Charity, any organization of Central Government or State Government, Municipal Body or any other recognized authority.

4. The Companies Regulation, 1956 also provides for distribution of assets of such companies on winding up as under: --

"If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, to be determined by the members of the company at or before the time of dissolution or in default thereof, by the High Court of Judicature that has or may acquire jurisdiction in the matter."



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5. In the background of above provisions, the Ministry of Corporate Affairs is considering to prescribe following guidelines for strike off name under 560 of the Companies Act, 1956 for section 25 companies as under: --

I. A section 25 Company may apply to Registrar of Companies in e-form (to be prescribed) for strike off name under 560 of the Companies Act, 1956 after satisfying following conditions : --

(a) The section 25 company should have passed a resolution in general meeting to apply Registrar of Companies to strike off name under 560 of the Companies Act, 1956 which should have been approved by all members/shareholders of the company.

(b) The section 25 company has not commenced any activity or operation since its incorporation or stopped activities for more than last 03 years.

(c) The company has not received any donation, grants or contribution etc., other than its members.

(d) Where the company has obtained any special status from any authority such as Income Tax, Commissioner of Charity or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority then a "No Objection Certificate" has to be obtained from the concerned authority.

(e) The existing assets, if any has to be transferred to a similar object company (section 25 company) before applying to Registrar of Companies for strike off the name under section 560 of the Act.

(f) The company should have filed its all upto date Balance Sheets and Annual Returns and latest Balance Sheet should not have any Assets or Liabilities.

(g) The Directors have to file an affidavit and indemnity as required under present exit guidelines and confirming above compliances/ status.

(h) A certificate from practicing Chartered Accountants/ Company Secretary/ Cost Accountant certifying the above status / compliances by the company.

II. On receipt of above documents and being satisfied, the Registrar of Companies may consider to initiate action under section 560 of the Companies Act, 1956.

6. You are requested to examine the proposed guidelines and furnish your comments/recommendations to the Ministry by 15th July, 2011 by e-mail on following e-mail addresses.

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

Yours faithfully,

(Monika Gupta)
Assistant Director



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CARVES OUT PROVIDED IN IND AS

The Ind As have been prepared by NACAS and with its recommendation submitted to MCA. NACAS adopted due consultative proposed of hosting the draft Ind As insisting / suggestions and therefore after deliberated with industries representative in NACAS. The finally recommended Ind AS have the following carve outs. These carve outs have been made to fill up the gap/differences in application of Accounting Principles Practices and economic conditions prevailing in India.

1. Ind AS 21-The Effects of Changes in Foreign Exchange Rates

It requires recognition of exchange differences arising on translation of monetary items from foreign currency to functional currency directly in profit or loss.

Carve out

Ind AS 21 permits an option to recognise exchange differences arising on translation of certain long-term monetary items from foreign currency to functional currency directly in equity. In this situation, Ind AS 21 requires the accumulated exchange differences to be amortised to profit or loss in an appropriate manner.

2. Ind AS 28- Investment in Associates

1. Paragraph 25 require that difference between the reporting period of an associate and that of the investor should not be more than three months, in any case.

Carve out

The phrase 'unless it is impracticable' has been added in the relevant requirement i.e., paragraph 25 of Ind AS 28.

2. IAS 28 requires that for the purpose of applying equity method of accounting in the preparation of investor's financial statements, uniform accounting policies should be used. In other words, if the associate's accounting policies are different from those of the investor, the investor should change the financial statements of the associate by using same accounting policies.

Carve out

The phrase, 'unless impracticable to do so' has been added in the relevant requirements i.e., paragraph 26 of Ind AS 28.

3. Ind AS 32- Financial Instruments in Presentation Part,

A Carve out is an exception has been included to the definition of 'financial liability' in paragraph 11 (b) (ii), Ind AS 32 to consider the equity conversion option embedded in a convertible bond denominated in foreign currency to acquire a fixed number of entity's own equity instruments as an equity instrument if the exercise price is fixed in any currency. This exception is not provided in IAS 32.

4. Ind AS 39- Financial Instruments: Recognition and Measurement

IAS 39 requires all changes in fair values in case of financial liabilities designated at fair value through Profit and Loss at initial recognition shall be recognised in profit or loss. IFRS 9 which will replace IAS 39 requires these to be recognised in 'other comprehensive income'

Carve out



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A proviso has been added to paragraph 48 of Ind AS 39 that in determining the fair value of the financial liabilities which upon initial recognition are designated at fair value through profit or loss, any change in fair value consequent to changes in the entity's own credit risk shall be ignored.

5. Ind AS 103, Business Combinations

IFRS 3 requires bargain purchase gain arising on business combination to be recognised in profit or loss.

Carve out

Ind AS 103 requires the same to be recognised in other comprehensive income and accumulated in equity as capital reserve, unless there is no clear evidence for the underlying reason for classification of the business combination as a bargain purchase, in which case, it shall be recognised directly in equity as capital reserve.

6. Ind AS 101, First-time Adoption of Indian Accounting Standards (i) Presentation of comparatives in the First-time Adoption of Indian Accounting Standards (Ind AS) 101 (corresponding to IFRS 1)

IFRS 1 defines transitional date as beginning of the earliest period for which an entity presents full comparative information under IFRS. It is this date which is the starting point for IFRS and it is on this date the cumulative impact of transition is recorded based on assessment of conditions at that date by applying the standards retrospectively except to the extent specifically provided in this standard as optional exemptions and mandatory exceptions. Accordingly, the comparatives, i.e., the previous year figures are also presented in the first financial statements prepared under IFRS on the basis of IFRS.

Carve out

Ind AS 101, requires an entity to provide comparatives as per the existing notified Accounting Standards. It is provided that, in addition to aforesaid comparatives, an entity may also provide comparatives as per Ind AS on a memorandum basis.

(ii) Presentation of reconciliation

IFRS 1 requires reconciliations for opening equity, total comprehensive income, cash flow statement and closing equity for the comparative period to explain the transition to IFRS from previous GAAP.

Carve out

Ind AS 101 provides an option to provide a comparative period financial statements on memorandum basis. Where the entities do not exercise this option and, therefore, do not provide comparatives, they need not provide reconciliation for total comprehensive income, cash flow statement and closing equity in the first year of transition but are expected to disclose significant differences pertaining to total comprehensive income. Entities that provide comparatives would have to provide reconciliations which are similar to IFRS.

(iii) Cost of Non-current Assets Held for Sale and Discontinued Operations on the date of transition on First-time Adoption of Indian Accounting Standards (Ind AS)

Carve out



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Ind AS 101 provides transitional relief that while applying Ind AS 105 - Non-current Assets Held for Sale and Discontinued Operations, an entity may use the transitional date circumstances to measure such assets or operations at the lower of carrying value and fair value less cost to sell.

(iv) Foreign currency gains/losses on translation of long term monetary items.

Carve out

Ind AS 101 provides that on the date of transition, if there are long-term monetary assets or long-term monetary liabilities mentioned in paragraph 29A of Ind AS 21, an entity may exercise the option mentioned in that paragraph regarding spreading over the unrealised Gains/Losses over the life of Assets/Liabilities either retrospectively or prospectively. If this option is exercised prospectively, the accumulated exchange differences in respect of those items are deemed to be zero on the date of transition.

(v) Financial instruments existing on transition date

Carve out

Ind AS 101 provides that the financial instruments carried at amortised cost should be measured in accordance with Ind AS 39 from the date of recognition of financial instruments unless it is impracticable (as defined in Ind AS 8) for an entity to apply retrospectively the effective interest method or the impairment requirements of Ind AS 39. If it is impracticable to do so then the fair value of the financial asset at the date of transition to Ind-ASs shall be the new amortised cost of that financial asset at the date of transition to Ind ASs. Ind AS 101 provides another exemption that financial instruments measured at fair value shall be measured at fair value as on the date of transition to Ind AS.

(vi) Definition of previous GAAP under Ind AS 101 Firsttime Adoption of Indian Accounting Standards

IFRS 1 defines previous GAAP as the basis of accounting that a first-time adopter used immediately before adopting IFRS.

Carve out

Ind AS 101 defines previous GAAP as the basis of accounting that a **first-time adopter** used immediately before adopting Ind ASs for its reporting requirements in India. For instance, for companies preparing their financial statements in accordance with the existing Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006 shall consider those financial statements as previous GAAP financial statements.

(vii) Cost of Property, Plant and Equipment (PPE), Intangible Assets, Investment Property, on the date of transition of First-time Adoption of Indian Accounting Standards.

Ind AS 101 provides an entity an option to use carrying values of all assets as on the date of transition in accordance with previous GAAP as an acceptable starting point under Ind AS.

B.Carve-outs for specific industries

7. Ind AS 18-Revenue



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On the basis of principles of the IAS 18, IFRIC 15 on Agreement for Construction of Real Estate, prescribes that construction of real estate should be treated as sale of goods and revenue should be recognised when the entity has transferred significant risks and rewards of ownership and has retained neither continuing managerial involvement nor effective control.

Carve out

IFRIC 15 has not been included in Ind AS 18, Revenue. Such agreements have been scoped out from Ind AS 18 and have been included in Ind AS 11, Construction Contracts.

8. Ind AS 18- Revenue

Carve out

A footnote has been added in paragraph 1 to Ind AS 18, Revenue, that for rate regulated entities, this standard shall stand modified, where and to the extent the recognition and measurement of revenue of such entities is affected by recognition and measurement of regulatory assets/liabilities as per the Guidance Note on the subject being issued by the Institute of Chartered Accountants of India.

9. Indian Accounting Standard on Agriculture (Corresponding to IAS 41)

IAS 41, Agriculture, requires measurement of biological assets, viz ,living animals and plants at fair value and recognizing gains and losses arising on such measurement in profit or loss, unless ascertainment of fair value is unreliable..

Carve out

It has been decided to revise the Standard and not to issue the standard as it is.

10. Ind As -19 Employee Benefits vis-à-vis IFRSs/IASs restricting options.

According to Ind AS 19 the rate to be used to discount post-employment benefit obligation shall be determined by reference to the market yields on government bonds, whereas under IAS 19, the government bonds can be used only where there is no deep market of high quality corporate bonds. To illustrate treatment of gratuity subject to ceiling under Indian Gratuity Rules, an example has been added in Ind AS 19. IAS 19 permits various options for treatment of actuarial gains and losses for post employment defined benefit plans whereas Ind AS 19 requires recognition of the same in other comprehensive income, both for post-employment defined benefit plans and other long-term employment benefit plans. The actuarial gains recognised in other comprehensive income should be recognised immediately in retained earnings and should not be reclassified to profit or loss in a subsequent period.



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USER GUIDE ON PAYING MCA21 FEES VIA NEFT MODE

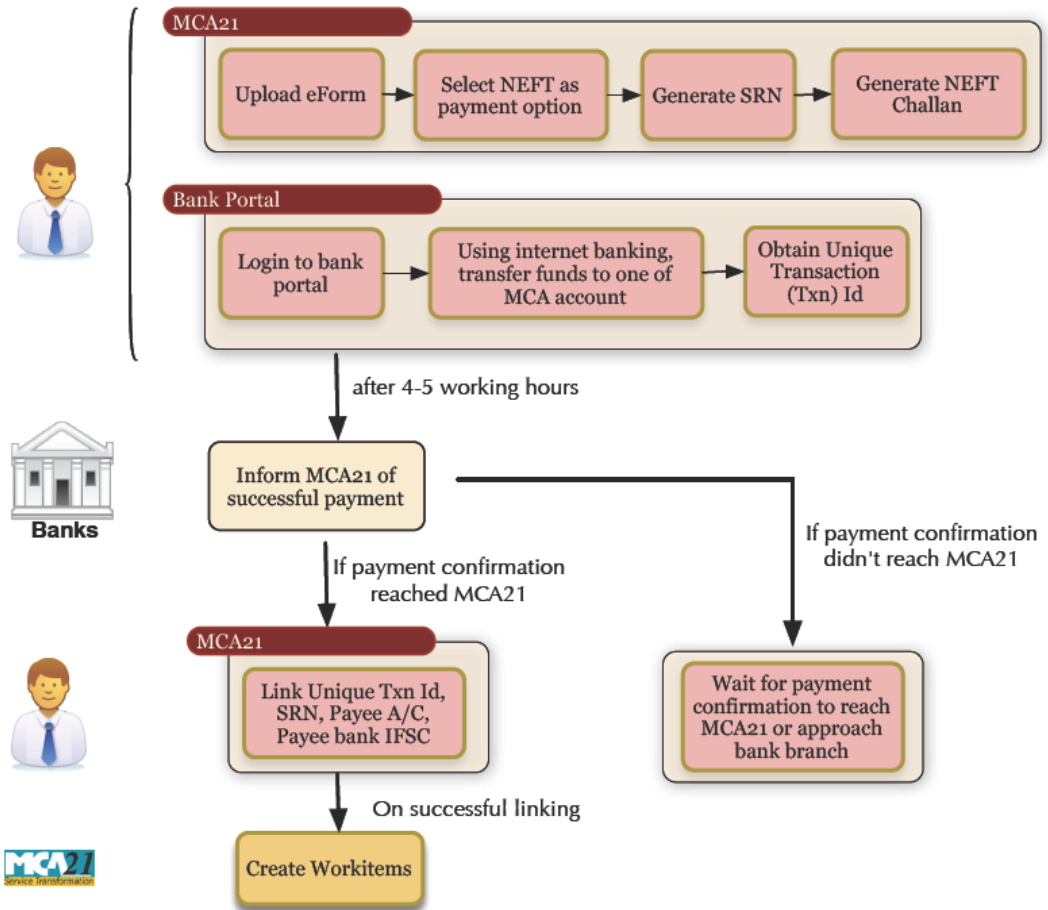
User Guide on Paying MCA21 Fees Via NEFT

Introduction:

Currently MCA21 payments are allowed via Credit Card, Internet Banking & Physical Challan. The Ministry has authorized 5 banks (Indian Bank, HDFC, ICICI, PNB and SBI) for collection of MCA21 fees, which means that only the account holders of these banks can avail Internet banking facility. Further, payment via challan can only be made in the authorized branches of these above five banks. Though this was a major improvement compared to the earlier manual system, it caused delays in incorporation of companies and processing of other eForms.

In order to eliminate inconveniences caused due to payment processing delays, Ministry is introducing payment of MCA fees via NEFT (National Electronic Fund Transfer) mode, in addition to already existing payment methods.

Process flow of payment of MCA21 fees using NEFT:





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1. User uploads eForm, selects 'NEFT' as payment option, generates a SRN and a eChallan which contains the procedure for conducting the NEFT transfer;
2. User transfer funds to one of the MCA21 account, via internet banking facility offered by their bank in which they hold an account. User may quote SRN in the remark column;
3. User's bank provides a unique transaction number (UTN) for the NEFT transfer;
4. Banks will inform MCA21 system in four to five working hours about the payment along with the UTN;
5. User logs in to MCA21 and link UTN and SRN. Additionally, for verification purpose, user will have to provide date of payment, IFSC code and account number from which the transfer was carried out and the amount. If the payment has been notified to MCA21 system and the details are matching, then the linking will be successful and MCA21 will create work item for further processing;
6. If details of payment for the SRN is still not received from banks, an information message is displayed to user to link SRN & UTN at a later time; If details doesn't match an error message is shown to the user.

What is NEFT?

NEFT is a nation-wide system that facilitates electronic transfer of funds from any bank branch to account holder of any other bank branch. The list of NEFT-enabled branches is available in the RBI website.

Presently, NEFT operates in hourly batches - there are eleven settlements from 9 am to 7 pm on weekdays and five settlements from 9 am to 1 pm on Saturdays.

NEFT transaction charges are available in the RBI website and are in addition to MCA21 filing fee.

Further details on NEFT can be found in the RBI website (<http://www.rbi.org.in/scripts/FAQView.aspx?Id=60>)

Notes for Information:

- 1) SRN will expire if payment doesn't reach MCA21 on time. Hence users should transfer funds well in advance taking into consideration of bank holidays and the settlement window mentioned as earlier.
- 2) Full amount has to be transferred in single transaction for a particular SRN. Amount can't be dividend into multiple payments.



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General Circular 37/2011

17/70/2011 –CL.V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated the 07.06.2011

To
All Regional Directors
All Registrar of Companies

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

In supersession of this Ministry's Circular no. 9/2011 dated 31.03.2011 and 25/2011 dated 12.05.2011, Ministry of Corporate Affairs hereby mandated certain class of companies to file Balance sheets and Profit and loss Account alongwith Director's and Auditor's Report for the year 2010-11 onwards by using XBRL taxonomy. The Taxonomy Business Rules, Validity tools etc required for preparation the above documents in XBRL format as the existing Schedule VI and Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006 have been prepared and hosted on the website of the Ministry at www.mca.gov.in. The **Frequently Asked Questions** (FAQs) about XBRL have been framed by the Ministry and they are being annexed as Annexure I with this circular for the information and easy understanding of the stakeholders. To enable filing on XBRL by stakeholders, MCA-21 portal will have XBRL filing module by July, 2011. Actual date will be informed separately.

Coverage in Phase I

2. The following class of companies have to file the Financial Statements in XBRL Form only from the year 2010-2011 :-

- (i) All companies listed in India and their Indian subsidiaries;
- (ii) All companies having a paid up capital of Rs. 5 Crore and above
- (iii) All companies having a turnover of Rs 100 crore and above.



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However banking companies, insurance companies, power companies and Non Banking Financial Companies (NBFCs) are exempted for XBRL filing, till further orders.

Additional Fee Exemption

3. All companies falling in Phase –I whose Balance Sheets are adopted in the Annual General Meeting held before 30.09.2011 are permitted to file upto 30-09-2011 without any additional filing fee. However, where companies hold the Annual General Meeting in the month of September 2011, they will file the Balance Sheet within 30 days from the date of adoption in the General Meeting as per section 220 of the Companies Act, 1956.

Training Requirement

4. Stakeholders desirous to have training on the XBRL or on taxonomy related issues, may contact the persons as mentioned in Annexure II.

(J.N. Tikku)

Joint Director

Tel 23381295

E – mail- [jyotinder.nath@mca.gov.in](mailto: jyotinder.nath@mca.gov.in)



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Annexure I

Frequently Asked Questions

1. What is XBRL?

XBRL is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. XBRL stands for eXtensible Business Reporting Language. It is already being put to practical use in a number of countries and implementations of XBRL are growing rapidly around the world.

2. Who developed XBRL?

XBRL is an open, royalty-free software specification developed through a process of collaboration between accountants and technologists from all over the world. Together, they formed XBRL International which is now made up of over 650 members, which includes global companies, accounting, technology, government and financial services bodies. XBRL is and will remain an open specification based on XML that is being incorporated into many accounting and analytical software tools and applications.

3. What are the advantages of XBRL?

XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision making. XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis, aided by software which can validate and process XBRL information. XBRL is a flexible language, which is intended to support all current aspects of reporting in different countries and industries. Its extensible nature means that it can be adjusted to meet particular business requirements, even at the individual organization level.

4. Who can benefit from using XBRL?

All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information. Because XBRL is extensible and flexible, it can be adapted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data.

5. What is the future of XBRL?

XBRL is set to become the standard way of recording, storing and transmitting business financial information. It is capable of use throughout the world,



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whatever the language of the country concerned, for a wide variety of business purposes. It will deliver major cost savings and gains in efficiency, improving processes in companies, governments and other organisations.

6. Does XBRL benefit the comparability of financial statements?

XBRL benefits comparability by helping to identify data which is genuinely alike and distinguishing information which is not comparable. Computers can process this information and populate both pre defined and customised reports.

7. Does XBRL cause a change in accounting standards?

No. XBRL is simply a language for information. It must accurately reflect data reported under different standards – it does not change them.

8. What are the benefits to a company from putting its financial statements into XBRL?

XBRL increases the usability of financial statement information. The need to re-key financial data for analytical and other purposes can be eliminated. By presenting its statements in XBRL, a company can benefit investors and other stakeholders and enhance its profile. It will also meet the requirements of regulators, lenders and others consumers of financial information, who are increasingly demanding reporting in XBRL. This will improve business relations and lead to a range of benefits.

With full adoption of XBRL, companies can automate data collection. For example, data from different company divisions with different accounting systems can be assembled quickly, cheaply and efficiently. Once data is gathered in XBRL, different types of reports using varying subsets of the data can be produced with minimum effort. A company finance division, for example, could quickly and reliably generate internal management reports, financial statements for publication, tax and other regulatory filings, as well as credit reports for lenders. Not only can data handling be automated, removing time-consuming, error-prone processes, but the data can be checked by software for accuracy.

9. How does XBRL work?

XBRL makes the data readable, with the help of two documents – Taxonomy and instance document. Taxonomy defines the elements and their relationships based on the regulatory requirements. Using the taxonomy prescribed by the regulators, companies need to map their reports, and generate a valid XBRL instance document. The process of mapping means matching the concepts as reported by the company to the corresponding element in the taxonomy. In addition to assigning XBRL tag from taxonomy, information like unit of measurement, period of data, scale of reporting etc., needs to be included in the instance document.

10. How do companies create statements in XBRL?

There are a number of ways to create financial statements in XBRL:

- XBRL-aware accounting software products are becoming available which will support the export of data in XBRL form. These tools allow users to map charts of accounts and other structures to XBRL tags.



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- Statements can be mapped into XBRL using XBRL software tools designed for this purpose
- Data from accounting databases can be extracted in XBRL format. It is not strictly necessary for an accounting software vendor to use XBRL; third party products can achieve the transformation of the data to XBRL.
- Applications can transform data in particular formats into XBRL. The route which an individual company may take will depend on its requirements and the accounting software and systems it currently uses, among other factors.

11. Is India a member of XBRL International?

India is now an established jurisdiction of XBRL International. A separate company, under section 25 has been created, to manage the operations of XBRL India. The main objectives of XBRL India are

- To create awareness about XBRL in India
- To develop and maintain Indian Taxonomies
- To help companies, adopt and implement XBRL.

For more information, visit www.xbrl.org/in

12. Which taxonomies developed for Indian reporting requirements? Where can I find the taxonomies?

Taxonomies for Indian companies are developed based on the requirements of

- Schedule VI of Companies Act,
- Accounting Standards, issued by ICAI
- SEBI Listing requirements.

Taxonomies for Manufacturing and service sector (referred as Commercial and Industrial, or C&I) and Banking sector, is acknowledged by XBRL International. These taxonomies are available at <http://www.xbrl.org/in/>

13. Where can I find more information about XBRL?

Please visit www.xbrl.org . Also Ministry of Corporate Affairs would be shortly developing its webpage on XBRL with list of contact persons for training purposes.

14. What are XBRL Documents?

An XBRL document comprises the taxonomy and the instance document. Taxonomy contains description and classification of business & financial terms, while the instance document is made up of the actual facts and figures. Taxonomy and Instance document together make up the XBRL documents.

15. What is Taxonomy?

Taxonomy can be referred as an electronic dictionary of the reporting concepts. Taxonomy consists of all the data definitions, the basic XBRL properties and the interrelationships amongst the concepts. It includes terms such as net income,



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EPS, cash, etc. Each term has specific attributes that help define it, including label and definition and potentially references. Taxonomies may represent hundreds or even thousands of individual business reporting concepts, mathematical and definitional relationships among them, along with text labels in multiple languages, references to authoritative literature, and information about how to display each concept to a user.

16. What is meant by extending taxonomy?

Taxonomy is extended to accommodate items/relationship specific to the owner of the information. Taxonomy extension therefore can be

- a) Modification in the existing relationships
- b) Addition of new elements in the taxonomy
- c) Combination both a & b

17. Are Taxonomies based on any standards?

Yes, taxonomies are based on the regulatory requirements and standards which are to be followed by the companies. Accordingly, depending on the requirements of every country, there can be country-specific taxonomies.

18. What is an Instance document?

An XBRL instance document is a business report in an electronic format created according to the rules of XBRL. It contains facts that are defined by the elements in the taxonomy it refers to, together with their values and an explanation of the context in which they are placed. XBRL Instances contain the reported data with their values and "contexts". Instance document must be linked to at least one taxonomy, which defines the contexts, labels or references.

Thus, in order to concluded the usage and explain the XBRL technology which leads to more information exchanges that can be effectively automated by use. This one standard approach leads to the best interest of the company or more so for the international business interests globally that warrant the accuracy of all the financial data for the end users and early collaborative decisions by the companies or those whose interest is involved for acquisition/ rights etc.





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DIPP UPDATE





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ALTERNATE MECHANISM FOR DISCHARGING STATUTORY OBLIGATIONS OF INDUSTRIAL ESTABLISHMENTS

DISCUSSION PAPER

This paper attempts to build upon a proposal contained in the draft National Manufacturing Policy. The views expressed in this discussion paper should not be construed as the views of the Government of India. The Department hopes to generate informed discussion on the subject, so as to enable the Government to take an appropriate policy decision at the appropriate time.

Alternate Mechanism for discharging statutory obligations of Industrial Establishments

The issue

Industrial establishments in India have a variety of statutory obligations to discharge. The Employees Provident Fund Act; Employees State Insurance Act; Payment of Gratuity Act; Personal Injuries (Compensation Insurance) Act; Workmen's Compensation Act, etc. are some of the major laws which require not only regular payouts by industrial units but also involve filing of periodic returns and maintenance of registers and records.

2. Large industry can engage professionals or dedicated man power to comply with these statutory obligations. These units also have the option of resorting to alternative mechanisms outside government arrangements for meeting these obligations under the EPF Act, the ESI Act, etc. But, beyond a certain threshold, these mechanisms resorted to even by the bigger players for statutory compliances are costly, time consuming and often not completely satisfactory.

3. SMEs in India, on the other hand, are largely single man or family managed entities. They often do not have resources to employ fulltime professionals to manage the work of statutory compliances. Given the multiplicity of compliances, it becomes virtually impossible for the units to fulfill all the obligations as required by law which range from remitting contributions to filing of periodic returns to maintenance of registers and records. As a result they are often forced to sidestep the burden of compliances by engaging casual/contract labour or resorting to more and more mechanization. Preference to mechanization so as to sidestep the compliance burden reduces employment opportunities even though it may not be the most cost effective production option in many cases. While being weary of complying with the department run schemes like ESI & EPF, the SMEs by virtue of their size – limited manpower and resources – are not in a position to exercise the option to have alternative arrangements. This may at times result in unintentional default and consequent harassment.

Alternative mechanism- creation of a specialized entity

4. In order to address issues of limited manpower and resources with the SMEs and the costly and often unsatisfactory arrangements made by larger players, an alternative mechanism could be created to take over the task of statutory compliances under the labour laws. The new service entity, specifically



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envisaged to take on the responsibility of meeting statutory obligations is expected to be more efficient, economical and financially better equipped to serve the interests of both the employers and the employees. The industry can then concentrate more on their core activities like production and marketing.

5. The proposed entity could also create a trust, as allowed under the EPF Act to individual companies, and could operate on the lines required therein ([Annexure-1](#)). Subscriptions to these trusts could be quantified by an actuary to the satisfaction of the Ministry of Labour. The industry can have the option of asking the entity to provide pension in lieu of or in addition to the provident fund and the subscription to the trust could be calculated accordingly.

6. Similarly this service entity could have its own medical facilities or could tie up with other hospitals to guarantee the services required under the ESI Act ([Annexure-2](#)). The latter will not require any amendment to the ESI Act since Section 87 as amended by the ESI (Amendment) Act 2010 provides for such an exemption in case of an equivalent standard of medical benefits.

7. This entity could also double up as an insurance company and provide a cover in the nature of job loss policy to take care of retrenchment compensation, etc. under the Industrial Disputes Act, or could obtain an insurance cover through another agency. Under the job loss policy, the entity could insure the workers against loss of employment in the event of a unit requiring to close down, or to reduce the workforce, due to financial constraints. This policy could be utilized for payment of compensation to workers at the time of closure of the company, if circumstances so require. The job loss policy will enable the service entity to pay suitable worker compensation in the eventuality of business closure through insurance and thereby eliminate the charge on the assets. The compensation could be better than what is provided for under the Industrial Disputes Act.

8. As an alternative to job loss policy, the entity may opt for a sinking fund mechanism or operate a combination of a job loss policy plus a sinking fund on behalf of the industrial establishments as detailed in the draft National Manufacturing Policy put up on the website of DIPP on 31st March, 2010. The sinking fund would be created out of contributions from the industry and its capital adequacy shall be certified by a CA/actuary.

9. This entity could also take up the responsibility of other statutory payouts under other laws like disability compensation and other such compensations on account of accidents, injury or death.

Economic viability of the entity

10. The above functions of the proposed entity can constitute a profitable business model and such an entity can function on commercial lines. If a proper legal framework is put in place for such an entity, number of such entities can emerge which could provide competition and bring down the eventual cost to the industry, particularly the SMEs. Such an entity could provide an option to the enterprises to continue to work within the government system or use the services of such an entity to take care of their various statutory liabilities/obligations. The proposed concept implies that, short of assuming the criminal liabilities of the companies, most business related statutory liabilities can be assumed by this entity.

Benefits to the Workers



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11. While such an arrangement would free the industry from huge compliance burden, the workers will also be assured of their rightful dues as this commercial entity would be financially stronger than individual industrial units which could be prone to sickness and abrupt closure. Moreover, the workers will also be saved from approaching multiple agencies requiring complex paper work and bureaucratic hurdles for getting their legitimate dues.

Add-on functions that this entity could undertake

12. This entity could also play the role of redeploying retrenched labour from one unit to another as is proposed to be done by an SPV/ association under the aforesaid draft National Manufacturing Policy. Once established, the entity could add further value to its business by providing other sundry services based on the perceived needs like payment of taxes, electricity dues, insuring the fixed assets, pay roll maintenance, etc.

Issues for comments

13. Issues on which comments are invited:-

- i) Further suggestions on the structuring of the proposed alternative mechanism/entity.
- ii) Is it a business model capable of attracting private sector participation?
- iii) Will the existing players in the insurance sector be willing to take up the activity in addition to their present mandate?
- iv) Suggestions on additional activities that the entity could undertake besides those mentioned above.
- v) The likelihood of such an entity being used extensively by the intended beneficiaries, SMEs and other establishments.
- vi) The perception of workers towards such an entity.
- vii) The threshold level of operations for it to become economically viable
- viii) The issues relating to investment of its corpus to provide enough liquidity while ensuring solvency of the entity.
- ix) Will there be a need to have a regulator for such entities? Can IRDA be entrusted with the responsibility?

14. Stakeholders may post their responses on the DIPP website or email them at plnm1981@yahoo.co.in to Shri P.L.N. Murthy, Under Secretary, DIPP or fax them at 011- 23063656 by 16 August 2011.



NATIONAL MANUFACTURING POLICY: A DISCUSSION PAPER

DETAILS CAN BE ACCESSED AT:
http://www.dipp.nic.in/NMP_DiscussionPaper/NMP_DiscussionPaper_2010.pdf

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