



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

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CS UPDATE

May 28, 2010

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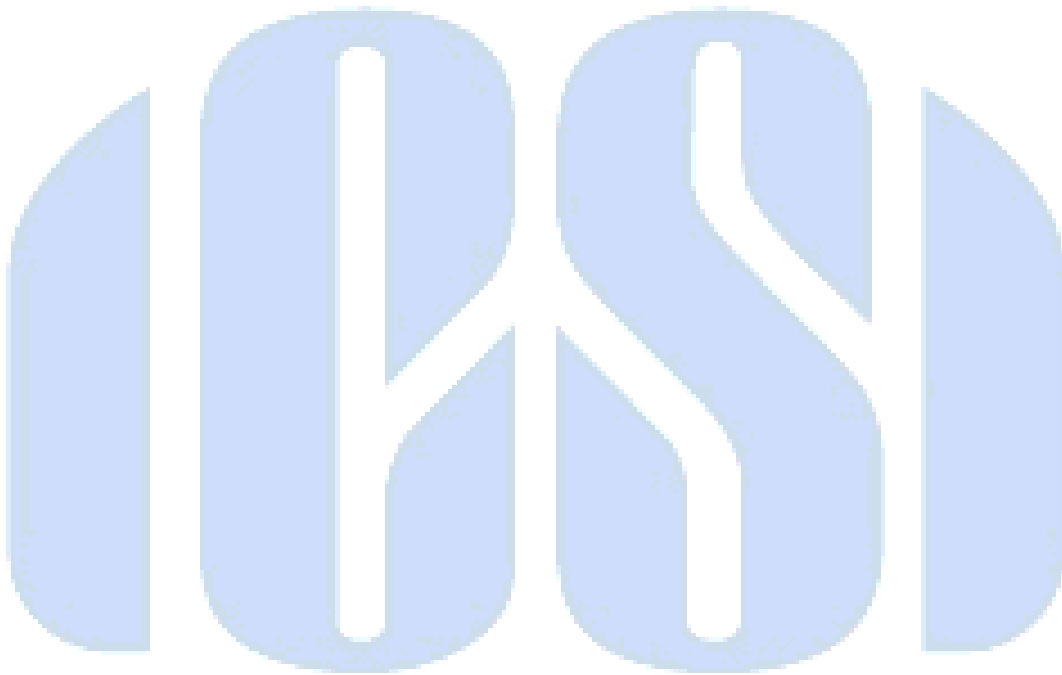
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Forthcoming Programmes

- 38th National Convention of Company Secretaries at Kolkata on 2-3-4 September, 2010

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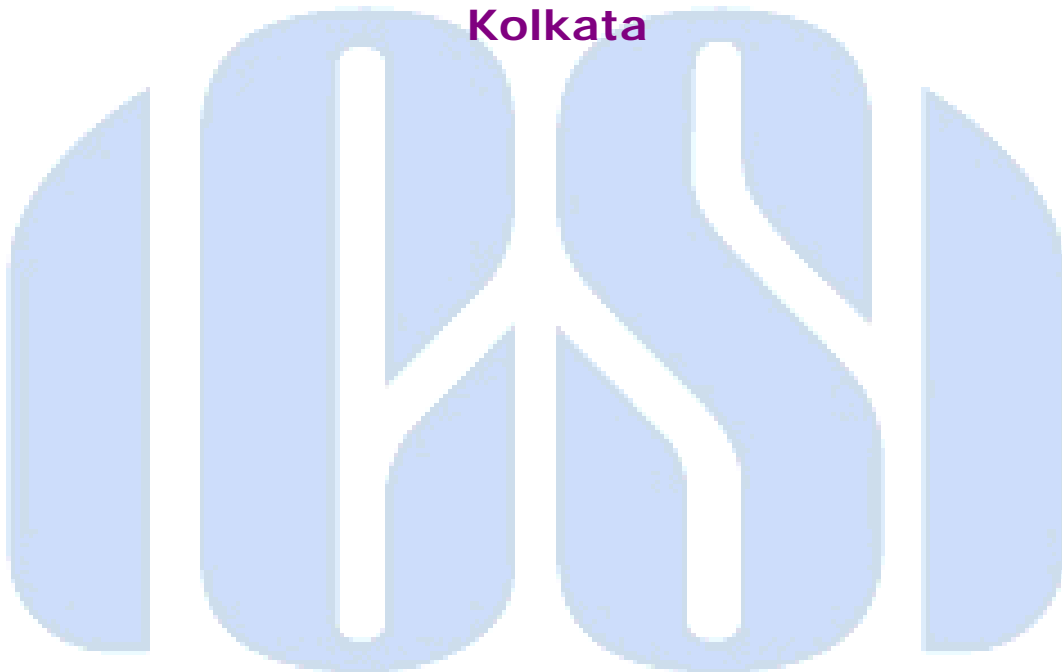
38th National Convention of Company Secretaries

Dates:

September 2-3-4, 2010

Venue:

Kolkata



PCS Updates

Attention All Members in Practice !!!

In accordance to the Guidelines for Compulsory Attendance of Professional Development Programmes by Members, which were notified and came into effect from January 1, 2008 every PCS is required to secure 12 Programme Credit Hours in one year or 40 Programme Credit Hours in a block of three years by attending approved learning programmes.

The current block of three years is ending on December 31, 2010

Members in practice are advised to obtain the mandatory Programme Credit Hours within this block of three years by attending approved learning programmes or by contributing articles in the Chartered Secretary / Backgrounder of the National Convention in order to be eligible for renewal of Certificate of Practice.

Members in practice may check their status of Programme Credit Hours on the ICSI website and inform the Institute about discrepancy, if any.

A copy of the Guidelines for Compulsory Attendance of Professional Development Programmes by Members is available on the ICSI website at the link <http://www.icsi.edu/CSPractice/GuidelinesCompulsoryAttendanceatPDP/tabid/1078/Default.aspx>

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
(Constituted under the Company Secretaries Act, 1980)
ICSI Guideline No. 3 of November, 2007
Guidelines for Compulsory Attendance of
Professional Development Programmes for the Members

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. INTRODUCTION

The Company Secretaries Act, 1980 was enacted to make provisions for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

Members of the Institute in employment occupy important positions in industry. The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain category of companies. Our members in practice are also being recognized for issuing various certificates by various regulatory authorities.

In the present day scenario, a profession cannot maintain its cutting edge competencies unless its members regularly update their knowledge. Attendance and participation in Professional Development Programs, Participative Certificate Programs organized by the Headquarters and Centre for Corporate Research and Training (CCRT), and Seminars, Conferences, Study Circle Meetings organised by the Council, Regional Councils, Chapters, Satellite Chapters, and other recognised bodies enable members to—

1. Constantly upgrade professional competence and skills.
2. Sensitize them to new and emerging opportunities for service.
3. Assure users of professional services that they possess adequate skills commensurate with their professional responsibilities.
4. Improve their level of confidence to meet ever-changing demands on the profession.

The Perspective Planning Group constituted by the Council had recommended compulsory attendance by members at Professional Development Programmes as a means of ensuring constant updation of knowledge and skills of members. The ICSI, drawing strength from these recommendations, has now decided that the following guidelines are required to be followed for giving and recording credit as well as eligible programmes and the number of Program Credit Hours to be given for each program.

2. KEY DEFINITIONS

- 2.1 “Approved Learning Program” means any Professional Development Program, Continuing Education Program, Participative Certificate Program of the ICSI, ***Programmes organised through electronic/distance mode**** or any other program, Seminar or study circle meeting organised by the Council, Regional Council, Chapter or Satellite Chapter of the Institute, and programmes organised *[jointly with professional bodies or Chambers of Commerce]*.
- 2.2 “Year” for the purposes of these guidelines shall mean the period commencing from 1st day of April and ending on 31st day of March following.
- 2.3 “Learning Program Centre” (LPC) means any wing of the ICSI which conducts programs and includes the Council, any Committee of the Council, Regional Councils, Chapters, Satellite Chapters and shall include any other centre, wing or any other entity as may be recognized by the Council from time to time for this purpose.

3. AUTHORISATION AND METHOD OF REGULATION

- 3.1 Under Section 9 of the Company Secretaries Act, 1980, the responsibility for management of the affairs of the Institute and for discharging the functions assigned under the said Act vests with the Council.
- 3.2 The Council considers that in the context of the liberalised economy and the competitive environment, proper regulation and maintenance of the status and standards of the Members is necessary for ensuring competency of the members.
- 3.3 Pursuant to the above-mentioned authorizations, these guidelines are therefore being issued for implementation.
- 3.4 Compliance with these guidelines is mandatory for the members in practice and recommendatory for other members.
- 3.5 For the removal of doubts, it is clarified that all issues relating to the implementation and interpretation of terms used in these guidelines shall be the responsibility of the Professional Development Committee constituted by the Council. The Committee may discharge its duties in this regard (including issue of supplementary guidelines from time to time) for implementation within the limits of its authority as specified or prescribed by the Council.

4. POWER TO MODIFY GUIDELINES

To ensure that these guidelines are dynamic, the requirements, conditions or terms specified in these guidelines may be modified from time to time at the discretion of the Council on the recommendations of the Professional Development Committee of forward for excess Program Credit Hours from block of three years to another block of three years will be allowed.

- 5.1.1 It would be sufficient if a member obtains atleast **twelve credit hours in a year or 40 credit hours in a block of three years**. If a member takes a Certificate of

* Amended by the Council in its 192nd meeting held on March 18-19, 2010 at New Delhi

Practice during the block, the requirement for obtaining Credit Hours shall be as under :

Certificate of Practice taken during The requirement of Credit Hours

1st April to 30th September of the first year of the block

Twelve Credit Hours in a year or 40 Credit hours in the block of three years

1st October to 31st March of the first year of the block

No requirement of Credit Hours in the First Year of the block.

Twelve Credit Hours each in the second and third year of the block

1st April to 30th September of the second year of the block

Twelve Credit Hours each in the second and third year of the block

1st October to 31st March of the second year of the block

No requirement of Credit Hours in the second year of the block.

Twelve Credit Hours in the third year of the block

1st April to 30th September of the third year of the block

Twelve credit Hours in that year

1st October to 31st March of the the Council.

No requirement of Credit Hours in

5. APPLICABILITY OF THE GUIDELINES

5.1 It is mandatory for all members in practice of the Institute, except those specified in para 6.2 to secure **12 Program Credit Hours (PCH) in a year or 40 Program Credit Hours in a block of 3 years by attendance of approved learning program.** However, no carry *third year of the block that block*

No credit hours will be given to a participant who attends the programme partially. Members whose reply to prize queries is published in the Chartered Secretary will be entitled to four Programme Credit Hours].

5.2 The requirement specified above shall not apply to:

- (i) A member who has attained the age of 65 years.
- (ii) A member to whom the Professional Development Committee may in their absolute discretion grant partial/full exemption on account of facts and circumstances of the case which, in the opinion of the said Committee, prevents such member from compliance with these guidelines.

6. FUNCTIONS OF THE LEARNING PROGRAM CENTRES

6.1 To conduct programs on current topics for the benefit of the members.

6.2 To maintain attendance record of the member attending the program in a manner which will be prescribed.

6.3 To furnish periodic Activity and Attendance Report to the Headquarters of the ICSI for updation in the master database.

7. OBLIGATIONS OF THE MEMBER

- 7.1 A personal record of compliance with the requirements of Program Credit Hours is required to be maintained by each member on an annual basis. This record shall be open to verification by the Institute.
- 7.2 At the time of payment of annual membership fees, every member is required to confirm that they have secured the minimum annual Program Credit Hours (PCH) and that the record can be produced to the Institute for verification on request.

8. MANNER OF CALCULATION OF PROGRAM CREDIT HOURS (PCH)

- 8.1 No Program Credit Hours will be awarded for any learning program whose duration is less than 1 hour.
- 8.2 The basis of calculation of Program Credit Hours will be as under:

<i>No. of hours of Learning Program attended by the member</i>	<i>Program Credit Hours (PCH)</i>
Beyond 1 hour and upto 2 hours	1
Beyond 2 hours and upto 4 hours in a single day	2
Beyond 4 hours in a single day	4
Program spanning 1 ½ days	6
Program spanning 2days	8
Program spanning 2 ½ days and above/ National Convention	10

- 8.3 A member whose article is published in the “Chartered Secretary” will be entitled to 4 Program Credit Hours.
In respect of joint authorship of the article, the two credit hours be awarded to each author. However, the joint authorship should be limited to two authors only.
The article published in the Souvenir of National Convention be treated at par with the article published in the Chartered Secretary for the purposes of grant of credit hours.
- 8.4 If the Course Coordinator attends the full program, full credit of the Program Credit Hours allotted for the program will be given.
- 8.5 No Program Credit Hours shall be given to a member for acting as a faculty in Oral Tuition Classes.
- 8.6 There may be cases of members contributing articles in newspapers, working on research projects, preparation of or vetting of background or technical material, participating in interactive media programs, etc. All such cases will be decided by the Committee on case to case basis until fresh guidelines covering such instances are drawn up.
- 8.7 A member who acts as a Chairman or Speaker in any technical session at a Workshop, Seminar or Conference organised by the Program Learning Centre will be entitled to equivalent number of Program Credit Hours as is available for the said technical session.

8.8 For Members who reside in places beyond 100 km from the nearest Regional Council/Chapter/Satellite Chapter and attend a program at any Program Learning Centre, they shall be awarded double the Program Credit Hours for which the concerned Program is entitled. However this will not apply to attendance at the National Convention/National Conference of Practising Company Secretaries/Regional Conferences organised by the Regional Councils. *Such members have also the option to prepare a research paper on a topic recommended by the Secretariat.*

Where the members in practice residing in remote places are not able to attend the professional development programmes, they may write to the Institute for approving a topic on which they can prepare research paper to get the exemption from securing programme credit hours.

The Research paper includes :

- (i) A concept paper on emerging areas of practice for Company Secretaries
 - (ii) A Referencer/backgrounder on contemporary topics relevant to Company Secretaries
 - (iii) A booklet on any topic relating to the areas of practice for Company Secretaries
 - (iv) A monograph on any contemporary topic relevant to the Practising Company Secretaries
 - (v) An empirical study of practical relevance to the Practising Company Secretaries
- Members whose research paper is approved by the Professional Development Committee of the Council, will be exempted from the requirement of securing programme credit hours for a block of three years.

Members who reside in places beyond 100 Kms. from the nearest Regional Council/Chapter/Satellite Chapters will be entitled for Eight Programme Credit Hours if their article/reply to prize query is published in the Chartered Secretary.

9. MONITORING REQUIREMENTS

- 9.1 The Professional Development Committee will monitor and review the programs conducted by the various Program Learning Centres from time to time and appraise the Council of the progress.
- 9.2 The said Committee shall set up an appropriate monitoring mechanism and provide clarifications (as it considers necessary) to all concerned for effective implementation of these guidelines *as per Annexure.*

10. These Guidelines are effective from 1st January, 2008.

Annexure

MECHANISM FOR MAINTENANCE OF ATTENDANCE RECORDS OF MEMBERS AT PROFESSIONAL DEVELOPMENT PROGRAMMES AND ISSUANCE OF CERTIFICATES FOR PROGRAMME CREDIT HOURS (PCH)

The Council has considered and approved the following mechanism for maintenance of attendance records of members at professional development programmes and issuance of certificates for Program Credit Hours under the Guidelines for Compulsory Attendance of Professional Development Programmes by Members:

1. The Program Centre shall ensure the quality of the programmes organized by it by inviting faculty having adequate knowledge, expertise and experience in the given subject/topic for discussion.

The brochure for every professional development programme should indicate the programme Credit Hours to be awarded to the participants.

2. The Program Centre will record the attendance of the participants and maintain the same for future reference and issue the certificates for Program Credit Hours in the prescribed format.
3. The Directorate of Information Technology in the Headquarters will develop software for recording and maintaining the attendance of members at the Professional Development Programmes and send to all Regional Councils/Chapters/Satellite Chapters.
4. The headquarters will initially provide to Regional Councils printed blank formats of certificates, which will be serially numbered.
5. *Regional Councils/Chapters/Satellite Chapters will maintain the list of names and membership numbers of the participants as well as faculty/Chairman/Speaker and Program Credit Hours given to each of them together with their signatures duly authenticated by competent authority for this purpose.*

Explanation : *Competent authority means (i) in the case of Regional Council Chairman or Secretary of the Regional Council or Executive Officer (ii) in the case of Chapter/Satellite Chapter, Chairman or Secretary or Executive Officer, if any, of the Chapter/Satellite Chapter.*

A Register be prepared for recording names of participants and obtaining their signatures both at the beginning as well as at the end of the programme.

6. At the time of renewal of membership every year, the members will send a declaration stating the name of the programmes attended, program learning centre, place, date, duration and number of Program Credit Hours secured during the calendar year to the Directorate of Training and Membership of the ICSI.

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
Northern/Eastern/Western/Southern India Regional Council
CERTIFICATE FOR PROGRAM CREDIT HOURS

Name of the Program Learning Centre:

This is to certify that Ms./Mr attended
..... (Name of the Programme) held on
at for days/hours as a
participant/faculty/speaker/ course coordinator/chairman in a technical session.

According to the Institute's Guidelines for Compulsory Attendance of Professional
Development Programmes by Members, she/he is hereby awarded
..... Program Credit Hours.

Competent Authority

Date

Place

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
CERTIFICATE FOR PROGRAM CREDIT HOURS

This is to certify that Ms./Mr has contributed an article in
Chartered Secretary/Convention Souvenir, which was published in the Month of
.....

According to the Institute's Guidelines for Compulsory Attendance of Professional
Development Programmes by Members, she/he is hereby awarded
..... Program Credit Hours.

Competent Authority

Date

Place

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
CERTIFICATE FOR PROGRAM CREDIT HOURS

This is to certify that Ms./Mr has contributed an article in
..... a Newspaper/worked on research project/prepared or vetted
backgrounder or technical material/participated in interactive media programs
.....

According to the Institute's Guidelines for Compulsory Attendance of Professional
Development Programmes by Members and as per the decision of the Professional
Development Committee at its meeting held on she/he is hereby
awarded Program Credit Hours.

Competent Authority

Date

Place

Salient Features of the Scheme for Programme Credit Hours (PCH) for Company Secretary in Employment approved by the Council on 29.12.2007

1. The Scheme shall be effective from 1st April, 2008.
2. PCH for company secretary in employment is recommendatory.
3. To begin with Company Secretary in employment may obtain six (6) PCH in a year. The Institute may gradually increase number of PCH to bring them at par with the PCH required to be completed by a Practicing Company Secretary (PCS).
4. The Regional Councils and the Chapters shall organize sufficient number of quality programmes useful and relevant to the CS in employment. In case of smaller Chapters, the concerned Regional Councils shall extend necessary help to organize sufficient number of programmes.
5. The detailed scheme will be published later.

The Institute has released the Exposure Draft of the Referencer on Secretarial Audit at the 11th National Conference of Practicing Company Secretaries held at Chandigarh on April 30-May 01, 2010. Members are requested to send their views / suggestions / comments on the Exposure Draft through email at sutanu.sinha@icsi.edu so as to reach the Institute latest by June 15, 2010.

**EXPOSURE DRAFT
OF
THE
REFERENCER
ON
SECRETARIAL AUDIT**

01. Introduction

The Ministry of Corporate Affairs, Government of India has released CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009. The preamble to Guidelines states that *“These guidelines provide for a set of good practices which may be voluntarily adopted by the Public companies. Private companies, particularly the bigger ones, may also like to adopt these guidelines.”*

The Guidelines, amongst other things, recommended, the introduction of Secretarial Audit. Para V of the Guidelines states that:

“Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders.”

Companies, which do not adopt these guidelines, either fully or partially, are expected to inform their shareholders about the reasons for not adopting these Guidelines. This is in consonance with the popular doctrine of “Comply or Explain”. The Board should give its comments on the Secretarial Audit in Directors’ Report as provided in Para V of the Guidelines.

02. Need for Compliance Management

Secretarial Audit is compliance audit; it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for

corporate compliance management. It helps ensure timely corrective measures when non-compliance is detected.

The multiplicity of laws, rules, regulations, etc. has necessitated introduction of a compliance management system to ensure compliances of laws applicable to a company. This has a two-fold objective:

- (a) Firstly, to protect the interests of the customers, employees, revenue, environment and the directors and officers of the company.
- (b) Secondly, to avoid any unwarranted legal actions by the law-enforcing agencies and other persons as well.

Under most laws, the persons responsible for compliance and liable for punishment are directors, company secretary and some of the senior officers who have been designated for specific compliances. From amongst the directors, the responsibility of managing and executive directors is greater. Under the Companies Act, a managing and/or whole-time director (besides company secretary) is an officer-in-default liable for penal consequences of defaults under the Act and the rules made under it and thus responsible for compliance, while under most other laws they are *a person in charge of, and responsible to, the company for the conduct of the business of the company*.

In India a number of statutes contain under the heading “Offences by Companies” an identical provision regarding vicarious liability of directors and other company officers for company’s offences. In *Girdhari Lal Gupta v. D.N. Mehta* AIR 1971 SC 2162, the Supreme Court has construed the expression ‘a person in charge and responsible for the conduct of the business of the company’ as to mean the person in overall control of the day-to-day business of the company. This ruling has been followed in a number of subsequent decisions.

Sub-clause I(C)(iii) of Clause 49 of the Listing Agreement provides “The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.” Accordingly, all listed companies have to have a system for reporting to the Board compliances with laws applicable to them. Hence, a Legal Compliance Reporting System is necessary to comply with sub-clause I(C)(iii) of Clause 49 of the Listing Agreement.

03. Secretarial Audit & Company Secretary in Practice (PCS)

A Company Secretary in Practice has been assigned the role of Secretarial Auditor in section 2(2)(c)(v) of The Company Secretaries Act 1980, which is the only statute in the country, carving out ‘Secretarial Audit’ as an area of practice.

PCS is the competent, fit and proper professional to conduct Secretarial Audit. A significant area of competence of PCS is “Corporate laws” (comprising statutes, rules, regulations, notifications, circulars and clarifications, forms, guidelines and bye-laws) owing to intensive and rigorous coaching, examinations, training and continuing education programs. PCS is a highly specialized professional in matters of statutory, procedural and practical aspects

involved in proper compliances under corporate laws. Strong knowledge base makes PCS a competent professional to conduct Secretarial Audit.

In order to guide its members in employment and in practice with the process of Secretarial Audit, The Institute of Company Secretaries of India has issued this Referencer.

04. Usefulness of Secretarial Audit

Secretarial Audit is sometimes described as Corporate Law Compliance Audit/Review. Whatever its name, Secretarial Audit is a process of verification of records and documents to check compliance with the provisions of various laws and rules/procedures, maintenance of books, records etc. by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Benefits of Secretarial Audit are manifold and its beneficiaries are many. Secretarial Audit enables corporate law compliance management. Ever-increasing complexities of laws and responsibilities of directors (especially non-executive or independent directors) make it imperative that a PCS opines whether or not there exist robust compliance mechanism and systems in the corporate structure. Also, PCS has to verify whether diverse requirements under applicable laws have been duly complied with or not and if there is a need for any corrective measures or improvement in the system.

05. Beneficiaries of Secretarial Audit

The major beneficiaries of Secretarial Audit include:

(a) Promoters

Secretarial Audit will assure the Promoters of a company that those in-charge of its management are conducting its affairs in accordance with requirements of laws.

(b) Management

Secretarial Audit will assure the Management of a company that those who are charged with the duty and responsibility of compliance are performing their duties competently, effectively and efficiently.

(c) Non-executive directors

Secretarial Audit will assure the Non-executive Directors that appropriate mechanisms and processes are in place to ensure compliance with laws applicable to the company, thus mitigating any risk from a regulatory or governance perspective; so that the people not in-charge of the day-to-day management of the company are not likely to be exposed to penal or other liability (and consequential risk and embarrassment) on account of non-compliance with law.

(d) Government authorities / regulators

Being a pro-active measure, Secretarial Audit has a salutary effect of substantially reducing the burden of the law-enforcement authorities and enhance governance and level of compliance.

(e) Investors

Secretarial Audit will assure the Investors that the company is conducting its affairs within the applicable legal framework.

(f) Other Stakeholders

Financial Institutions, Banks, Creditors and Consumers are enabled to measure the law abiding nature of Company management.

Corporate actions manifesting good Corporate Governance are vital for the healthy, vibrant and ever growing corporate sector in global economy. In developing economies, inclusive growth of all segments of society is more than imperative. Such actions adopting effective management tools like Secretarial Audit can go a long way in fulfilling these objectives.

06. Scope and Contents of Secretarial Audit

Scope:

The scope of Secretarial Audit, comprises the following:

- The Companies Act, 1956 and the Rules made under that Act;
- The Memorandum of Association and the Articles of Association of the company;
- Corporate Governance Voluntary Guidelines- 2009 issued by the Ministry of Corporate Affairs, Government of India;
- Corporate Social Responsibility Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
- Secretarial Standards issued by The Institute of Company Secretaries of India;
- The Depositories Act, 1996 and the Regulations and Bye-laws framed under that Act;
- The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the Rules made under that Act;
- The Equity Listing Agreements with Stock Exchange(s) both in India and overseas, including in particular clause 49;
- The Simplified Listing Agreement for debt securities in India;
- The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act');
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;

- (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
- (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
- (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
- (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
- (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
- (i) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

Besides, Secretarial Audit may cover:

- Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007; and
- Corporate Governance guidelines for Insurance Companies, 2009 issued by IRDA in case of companies regulated by IRDA.

Contents:

Secretarial Audit report should be addressed to the members and form part of the Annual Report (not as part of Directors' Report).

It should, among other things, contain:

1. Secretarial Auditor's comments and observations on compliance or non-compliance during the defined audit period, in relation to the statutes, rules, regulations, etc. applicable to the company;
2. Significant litigation(s) within the Scope of Audit;
3. Board Processes followed by the Company;
4. A statement on the existence of adequate internal control systems, procedures and safeguards for ensuring compliance with laws applicable to the company, commensurate with the size of the company and the nature of its business.
5. Such other matters that may be required to be audited/ reviewed from a compliance and governance perspective.
6. Any material event(s) happening after the financial year but before the date of the report having substantial impact on any of the above reported items.

Secretarial Audit Report shall be signed by the Practicing Company Secretary, who acts as the Secretarial Auditor in his individual capacity (and not as a partner or sole proprietor of a firm) by mentioning his CP Number.

07. Secretarial Audit-Periodicity

Proactive Secretarial Audit on a continuous basis would help the company in initiating corrective measures and strengthening its compliance mechanism and processes. It is advisable that the Secretarial Audit be carried out periodically (quarterly / half yearly) and adverse findings if any, be reported to the Board immediately.

08. Reporting with Qualification

The qualification, reservation or adverse remarks, if any, shall be stated by the PCS at the relevant places in his/her report. It is recommended that the qualifications, reservations or adverse remarks of PCS, if any, should be stated in **thick** type or in *italics* in the Secretarial Audit Report.

If the PCS is unable to form any opinion on any matter, he / she shall state that he/she is unable to form an opinion on that matter and the reasons thereof. If the scope of work required to be performed, is restricted on account of limitations imposed by the company or on account of circumstantial limitations (like certain books or papers being in custody of another person or Government Authority) the Report shall indicate such limitations. If such limitations are so material as to render the PCS incapable of expressing any opinion, the PCS should state that:

“In the absence of necessary information and records, he / she is unable to report compliance(s) by the Company”.

09. Professional Responsibility and Penalty for Incorrect Audit Report

While the Voluntary Guidelines on Corporate Governance have opened up a significant area of practice for Company Secretaries, it equally casts immense responsibility on them and poses a greater challenge whereby they have to justify fully, the faith and confidence reposed by the industry as well as Regulators and measure up to their expectations. Company Secretaries must take adequate care while conducting Secretarial Audit.

Any failure or lapse on the part of PCS in issuing a Secretarial Audit Report may not only attract penalty for incorrect report and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980 but also make him liable for any injury caused to any person due to his / her negligence in issuing the Secretarial Audit Report. Therefore, it becomes imperative for the PCS that he / she exercises great care and caution while issuing the Secretarial Audit report and also adheres to the highest standards of professional ethics and excellence in providing his / her services.

10. Pre-requisites to Secretarial Audit

Appointment

- a. Appointment of Secretarial Auditor and remuneration payable to him should be preferably made by the members and at the least by the Board of Directors of the Company. As a prudent corporate practice, it is advisable that changes in the office of Secretarial Auditor, are reported to the members in the Director's Report.

Communication to earlier incumbent

- b. Whenever a new Secretarial Auditor is appointed in place of the existing Secretarial Auditor, he/she should communicate the appointment to the earlier incumbent in writing by registered post, in view of the gist of relevant pronounced judgements apart from the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980,

Assignment

- c. After the appointment is carried out in the manner suggested, a letter of engagement shall be issued by the Company. Practising Company Secretary should formally accept the letter of engagement.
- d. It would be in the interest of the new Secretarial Auditor to attempt to procure at appropriate stage, authentic information about the remuneration paid to the earlier incumbent in view of the provisions under clause(11) of Part I of the First Schedule to the Company Secretaries Act, 1980.

Right to Information and Access to Records

- e. To enable a PCS to conduct Secretarial Audit , the Company should provide the PCS access at all times to the books, papers, minute, books, forms and returns filed under various statutes, documents and records of the company, whether kept in pursuance of the applicable laws or otherwise and whether kept at the registered office of the company or elsewhere which the PCS considers essential for the purposes of Secretarial Audit .
- f. A PCS shall be entitled to require from the officers or agents of the company, such information and explanations as the PCS may think necessary for the purpose of such Reporting. However, depending on the facts and circumstances he/she may obtain a letter of representation from the company in respect of matters where personal verification may not be practicable.

SECRETARIAL AUDIT REPORT

To

The Members ,

_____ Limited

Secretarial Audit Report

I/We have examined the registers, records and documents of Limited ("the Company") for the financial year ended on __, _____. according to the provisions of:

- The Companies Act, 1956 and the Rules made under that Act;
- The Memorandum of Association and the Articles of Association of the company;
- Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
- Corporate Social Responsibility Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
- Secretarial Standards issued by The Institute of Company Secretaries of India;
- The Depositories Act, 1996 and the Regulations and Bye-laws framed under that Act;
- The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the Rules made under that Act;
- The Equity Listing Agreements with Stock Exchange(s) both in India and overseas, including in particular clause 49;
- The Simplified Listing Agreement for debt securities in India;
- The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act');
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;

- (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
- (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
- (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
- (i) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
- Compliance with Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007; and
- Corporate Governance guidelines for Insurance Companies, 2009 issued by IRDA in case of companies regulated by IRDA.

Based on my examination and verification of the registers, records and documents produced to me and according to information and explanations given to me by the Company, I report that the Company has in my/our opinion, complied with the provisions of the Companies Act, 1956 (Act) and the Rules made under the Act and the Memorandum and Articles of Association of the Company. I report that:

1. The status of the Company during the Financial year has been that of a Private Company/Unlisted Public Company/Listed Public Company.
2. Also the Company has / has not been a holding or subsidiary of another company. The company has not been a Government/non Government Company or a financial/non financial company.
3. The Board of Directors of the Company is duly constituted. The change in the Board of Directors that took place during the period under review were carried out in due compliance with the provisions of the Companies Act, 1956.
4. The Company has complied with the provisions of the Act and Rules made under that Act in carrying out the following changes:
 - (a) Name of the Company
 - (b) Registered Office
 - (c) Principal business in conformity with the Objects
 - (d) Particulars of holding and subsidiary companies
 - (e) Promoters
 - (f) Auditors
 - (g) Directors
 - (h) Managerial Remuneration
 - (i) Officers in default

- (j) Share Capital (authorized, issued, subscribed, paid-up, conversion/redemption, reclassification, sweat).
5. The shareholding pattern of the company as on ——— was as detailed in Annexure
6. During the period under review the changes that took place in the shareholding pattern of the Company are detailed in Annexure.....
7. The company has altered the following provisions of :
- (i) The Memorandum of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
- (ii) The Articles of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.....
8. The company has entered into transactions with business entities in which directors of the company were interested as detailed in Annexure.....
9. The Directors have complied with the requirements as to disclosure of interests and concerns in contracts and arrangements, shareholdings / debenture holdings and directorships in other companies and interests in other entities.
10. The Directors have complied with the disclosure requirements in respect of their eligibility of appointment, their being independent and complied with the code of Business Conduct & Ethics for Directors and Management Personnel.
11. The company has advanced loans, given guarantees and provided securities amounting to Rs. _____ to directors and/or persons or firms or companies in which directors were interested, and has complied with the provisions of the Companies Act, 1956.
12. The Company has made loans and investments; or given guarantees or provided securities to other business entities as detailed in Annexureand has complied with the provisions of the Companies Act, 1956.
13. The amount borrowed by the Company from its directors, members, bank(s)/ financial institution(s) and others were within the borrowing limits of the Company. Such borrowings were made by the Company in compliance with applicable laws. The break up of the Company's domestic borrowings were as detailed in Annexure
14. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by bank(s) / financial institution(s) and non-banking financial companies.
15. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure....
16. Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in Annexure

17. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act, 1956 and other relevant statutes.
18. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.
19. The Company has credited and paid to the Investor Education and Protection Fund within the stipulated time, all the unpaid dividends and other amounts required to be so credited.
20. The Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and investments.
21. Prosecutions initiated against or show cause notices received by the Company for alleged defaults/offences under various statutory provisions and also fines and penalties imposed on the Company and or any other action initiated against the Company and /or its directors in such cases are detailed in Annexure.....
22. The Company has insured all its secured assets.
23. The Company has paid all its Statutory dues and satisfactory arrangements had been made for arrears of any such dues.
24. The Company (being a listed entity) has complied with the provisions of the Listing Agreement.
25. The Company has deposited within the stipulated time both Employees' and Employer's contribution to Provident Fund with the prescribed authorities.
26. The Company has provided a list of statutes in addition to the laws as mentioned above and it has been observed that there are proper systems in place to ensure compliance of all laws applicable to the company.
27. There are proper Board processes in the company

I further report that:

- (a) the Company has complied with the provisions of Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
- (b) the Company has complied with the provisions of Corporate Social Responsibility Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
- (c) the Company has followed the following Secretarial Standards issued by the Institute of Company Secretaries of India;
- (d) the Company has complied with the provisions of Equity listing Agreements entered into with _____ Stock Exchange(s) and Simplified Debt listing Agreement entered into with _____ Stock Exchange(s);

- (e) the Company has complied with the provisions of The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 including the provisions with regard to disclosures and maintenance of records required under the Regulations;
- (f) the Company has complied with the provisions of The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 including the provisions with regard to disclosures and maintenance of records required under the Regulations;
- (g) the Company has complied with the provisions of The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 with regard to_____ ;
- (h) the Company has complied with the provisions of The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 with regard to grant of Stock Options and implementation of the Schemes;
- (i) the Company has complied with the provisions of The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 with regard to_____ ;
- (j) the Company has complied with the provisions of the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
- (k) the Company has complied with the provisions of The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 with regard to delisting of Equity shares from the ____ Exchange(s);
- (l) the Company has complied with the provisions of the Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998 with regard to buy back of Equity shares.
- (m) the Company has complied with the Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007.
- (n) the Company has complied with Corporate Governance guidelines for Insurance Companies, 2009 issued by IRDA in case of companies regulated by IRDA.

Place :

Signature

Date :

Name of Company Secretary / Firm:

ACS/FCS No.

C P No.:

Note : The qualification, reservation or adverse remarks, if any, are explicitly stated at the relevant paragraphs above.

Board of Directors

... Limited

...

SECRETARIAL AUDIT REPORT

FOR THE PERIOD ...

EXECUTIVE SUMMARY

In terms of my appointment for conducting Secretarial Audit and the instructions I received, I conducted the audit of the records and documents maintained by the Company under the-

- The Companies Act, 1956;
- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997;
- The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992; and
- The Listing Agreement with the Stock Exchanges.

The Company has complied with the provisions of the Act and the Regulations mentioned above, subject to the following observations.

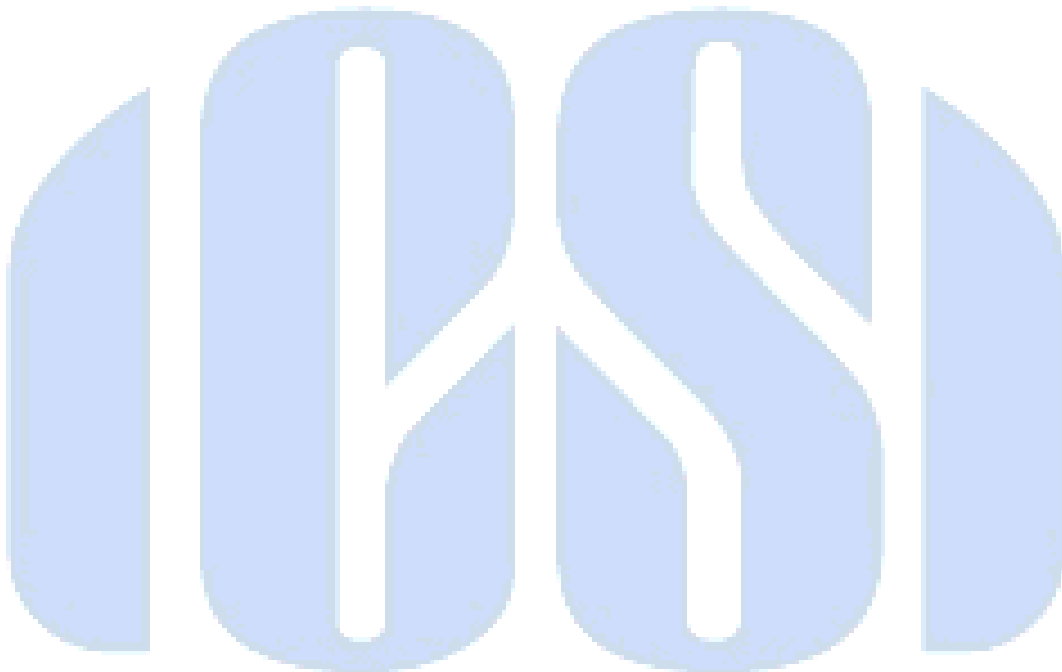
MCA

Updates

**Mandatory Filing of Form 11 before 30/05/2010 for all LLPs
incorporated before 01/10/2009**

Form 11 is made available at <http://llp.gov.in>. All LLPs whose financial year closes on 31st March of every year has to file Form 11 within 60 days from the date of financial year closure without any late fee and later it attracts additional fees @ of Rs. 100/- per day of delay. This financial year (closed on 31/03/2010), the due date falls on 30/05/2010.

This year Filing of Form 11 before 30/05/2010 is mandatory for all the LLPs incorporated before 01/10/2009 i.e. upto LLP No. AAA-0244 and optional for other LLPs if they are opting closure of Books of Accounts on 31/03/2011 (as 1st Financial Year) instead of on 31/03/2010.



General Circular No. 1 /2010

**F. No. 2/7/2010-CL V
Government of India
Ministry of Corporate Affairs**

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi,
Dated the 26th May, 2010

To

All Regional Director,
All Registrars of Companies.

Subject: Company Law Settlement Scheme, 2010

Sir,

It has been observed that a large number of companies are not filing their due documents timely with the Registrar of Companies. Due to this, the records available in the electronic registry are not updated and thereby are not available to the stakeholders for inspection. Further, due to not filing the documents on time, companies are burdened with additional fee and facing the prosecutions also.

2. There are many companies, who have also not increased their paid up capital up to the threshold limit provided in sub-section (3) and sub-section (4) of Section 3 of the Companies Act, 1956.

3. In order to give an opportunity to the defaulting companies to enable them to make their default good by filing belated documents and to become a regular compliant in future, the Ministry, in exercise of the powers under Section 611(2) and 637B (b) of the Companies Act, 1956 has decided to introduce a Scheme namely, "Company Law Settlement Scheme, 2010," condoning the delay in filing documents with the Registrar, granting immunity from prosecution and charging additional fee of 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under. The details of the Scheme are as under:-

(i) The scheme shall come into force on the 30th May, 2010 and shall remain in force up to 31st August, 2010.

(ii) **Definitions** - In this Scheme, unless the context otherwise requires, -

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

(b) "company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act;

(c) "defaulting company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act, which has made a default in filing of documents on the due date(s) specified under the Companies Act, 1956 and rules made there under;

(d) "designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company.

(iii) **Applicability**: - Any "defaulting company" is permitted to file belated documents in accordance with the provisions of this Scheme:

Provided that any defaulting private company or public company which has not increased its paid capital up to the threshold limit of rupees one lakh and rupees five lakh respectively as provided in sub section (3) and (4) of section 3 of the Companies Act, 1956, as the case may be, shall first file its documents to increase their paid up capital up to the threshold limit under the scheme and thereafter would be allowed to file other belated documents;

(iv) **Manner of payment of fees and additional fee on filing belated document for seeking immunity under the Scheme** - The defaulting company shall pay statutory filing fees as prescribed under the Companies Act and rules made there under along with an additional fee of 25 percent of the actual additional fee standardised under sub-section (2) of Section 611 of the Companies Act, 1956, payable on the date of filing of each belated document;

(v) **Withdrawal of appeal against prosecution launched for the offences**- If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of which application is made under this Scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish the proof of such withdrawal along with the application;

(vi) **Application for issue of immunity in respect of document(s) filed under the scheme** - The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form annexed, after closure of Scheme and after the document(s) are taken on file, or on record or approved by the Registrar of Companies as the case may be, but not after the expiry of six months from the date of closure of the Scheme. There shall not be any fee payable on this Form;

(vii) **Order by designated authority granting immunity from the penalty and prosecution** - The designated authority shall consider the application and upon being satisfied shall grant the immunity certificate in respect of documents filed in the Scheme;

(viii) **Scheme not to apply to certain documents** - (a) This Scheme shall not apply to the filing of documents for incorporation or establishment of place of business in India or where specific order for condonation of delay or prior approval under the provisions of the Companies Act, 1956 is to be obtained from the Company Law Board or the Central Government or Court or any other Competent Authority is required; (b) This Scheme shall not apply to companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies;

(ix) After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s);

4. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956 against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.

Yours faithfully,
Sd/-
(P.K. Malhotra)
Joint Director

For details please note the following link :

http://www.mca.gov.in/Ministry/latestnews/CircularCLSS_27may2010.pdf

Circular No. 2 /2010

**F. No. 2/7/2010-CL V
Government of India
Ministry of Corporate Affairs**

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated the 26th May, 2010

To

All Regional Director,
All Registrar of Companies.

Subject: Easy Exit Scheme, 2010

Sir,

It has been observed that certain companies have been registered under the Companies Act, 1956, but due to various reasons some of them are inoperative since incorporation or commenced business but became inoperative later on and are not filing their due documents timely with the Registrar of Companies. These companies may be defunct and are desirous of getting their names strike off from the Register of Companies.

2. In order to give an opportunity to the defunct companies, for getting their names strike off from the Register of Companies, the Ministry has decided to introduce a Scheme namely, "Easy Exit Scheme, 2010" under Section 560 of the Companies Act, 1956. The details of the Scheme are as under:-

(i) The Scheme shall come into force on the 30th May, 2010 and shall remain in force up to 31st August, 2010.

(ii) **Definitions** - In this Scheme, unless the context otherwise requires, -

(a) "company" means a company registered under the Companies Act, 1956;

(b) "Collective Investment Management Company" means the company as defined in clause (h) of sub-regulation of 2 of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999;

(c) “defunct company” means a company registered under the Companies Act, 1956 which is not carrying over any business activity or operation on or after the 1st April, 2008 and includes a company which has not raised its paid up capital as provided in sub sections (3) and (4) of section 3 of the Companies Act, 1956;

(d) “Non-Banking Financial Company” means a company as defined under clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

(e) “Scheme” means the “Easy Exit Scheme, 2010”, being specified through this Circular;

(f) “vanishing company” means a company, registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.

(iii) Applicability: -

(a) Any “defunct company” which has active status on Ministry of Corporate Affairs portal may apply under EES, 2010 in accordance with the provisions of this Scheme for getting its name strike off from the Register of Companies;

(b) Any defunct company which is a Government Company shall submit ‘No Objection Certificate’ issued by the concerned Administrative Ministry or Department or State Government along with the application under this Scheme;

(c) The purpose of the Scheme is to allow eligible companies to avail of this opportunity to exit from the Register of Companies after fulfilling the requirements laid down herewith and the decision of the Registrar of Companies in respect of striking off the name of company shall be final.

(iv) Scheme not applicable to certain companies: - The Scheme does not cover the following companies namely:-

(a) listed companies;

(b) companies registered under section 25 of the Companies Act, 1956;

(c) vanishing companies;

(d) companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;

- (e) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;
- (f) companies against which prosecution for a noncompoundable offence is pending in court;
- (g) companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- (h) company having secured loan ;
- (i) company having management dispute;
- (j) company in respect of which filing of documents have been stayed by court or Company Law Board(CLB) or Central Government or any other competent authority;
- (k) company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

(v) Procedure for making an application:-

- (a) Any defunct company desirous of getting its name strike off the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form EES, 2010, annexed;
- (b) The Form EES, 2010, should be filed electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in and there shall be no fee payable for filing of the same;
- (c) In case, the application in Form EES, 2010, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;
- (d) In all cases, the Form EES, 2010, shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice;
- (e) The company shall disclose pending litigations if any, involving the company while applying under this Scheme;
- (f) The Form shall be accompanied by an affidavit annexed at Annexure-A of Form EES, 2010, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be

specified) and then discontinued its operations and has not carried on any business after the 1st April, 2008, as the case may be;

(g) The Form EES, 2010 shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B of Form EES, 2010, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;

(h) The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form EES, 2010, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.

(vi) Simplified procedure for Registrar of Companies for removal of name of defunct companies:-

(a) The Registrar of Companies, on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its e-mail address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;

(b) The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under Easy Exit Scheme, 2010, on daily basis, on the MCA portal www.mca.gov.in, giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar;

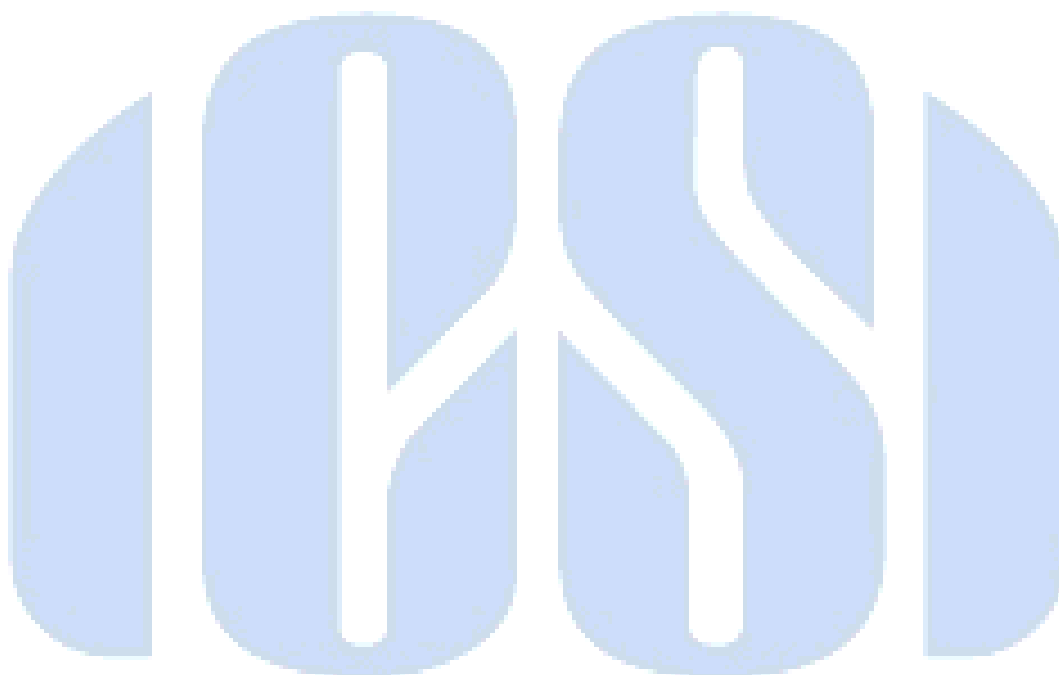
(c) In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of Companies, at the end of every week, after the Scheme commences, shall send intimation of such companies availing EES, 2010, during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing EES, 2010, during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;

(d) The Registrar of Companies immediately after passing of time given in sub-para (a) to (c) of this Para and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company under this Scheme shall stand dissolved from the date of publication of the notice in the Official Gazette.

Yours faithfully,
Sd/-
(P.K. Malhotra)
Joint Director

For details please note the following link :

<http://www.mca.gov.in/Ministry/latestnews/CircularEES27may2010.pdf>



RBI

Updates



RESERVE BANK OF INDIA

Date: May 26, 2010

NBFCs - Prevention of Money Laundering Amendment Rules, 2009 – Obligation of Banks/FIs

RBI/2009-10/475
DNBS(PD)CC.No 175/03.10.42/2009-10

May 26, 2010

All Non Banking Financial Companies/
Residuary Non Banking Companies

Dear Sir,

Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Amendment Rules, 2009 - Obligation of banks/Financial institutions

Government of India vide its Notification No. 7/2010-E.S.F.No6/8/2009-E.S dated February 12, 2010 has amended the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005. [A copy of the Notification is enclosed](#) for ready reference, which may be studied and the amendments clearly noted and spread across your organisation.

2. NBFCs and RNBCs are advised to strictly follow the amended provisions of PMLA Rules and ensure meticulous compliance with these Rules.

Yours faithfully,

(Uma Subramaniam)
Chief General Manager-in-Charge

Encl: As above

SEBI

Updates

Securities and Exchange Board of India

CIR/MRD/DP/18/2010

May 28, 2010

To,

All Stock Exchanges

Dear Sir/Madam,

Sub: Establishment of Connectivity with both depositories NSDL and CDSL – Companies eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories during February and March 2010.

2. The stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to the following:

a) At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange/s.

b) There are no other grounds/reasons for continuation of the trading in TFTS.

3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report.

Yours faithfully,

Harini Balaji
Deputy General Manager
022-26449372
harinib@sebi.gov.in

Encl: a/a

Annexure A

Sr. No.	Name of the Company	ISIN
1	New Markets Advisory Limited	INE800K01014
2	Global Securities Limited	INE742K01018
3	Ravinay Trading Company Limited	INE812K01019
4	KMC Speciality Hospitals (India) Limited	INE879K01018
5	Upasana Finance Limited	INE819K01014
6	Unitech International Limited	INE929K01011
7	VSF Projects Limited	INE923K01014
8	Lalphul Investments Limited	INE948K01011
9	Oswal Overseas Limited	INE906K01019
10	DJS Stock and Shares Limited	INE234E01019
11	Vikalp Securities Limited	INE186E01011
12	Tirupati Inks Limited	INE 493K01018

Securities and Exchange Board of India

CIRCULAR

CIR/MRD/DSA/17/2010

May 18, 2010

To

The Managing Director / Executive Director / CEO of all the Stock Exchanges and their Clearing House / Clearing Corporation.

Dear Sir/Madam,

Sub: Setting up of a Stock exchange/ a trading platform by a recognized stock exchange having nationwide trading terminals for SME

On November 05, 2008 SEBI had laid down the framework for recognition and supervision of stock exchanges/platforms of stock exchanges for small and medium enterprises (SMEs).

2. In order to lay down the policy for issue, listing and trading of the securities issued by the SMEs, necessary amendments have been made in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, SEBI (Merchant Bankers) Regulations, 1992, SEBI (Foreign Institutional Investors) Regulations, 1995, SEBI (Venture Capital Funds) Regulations, 1996, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. Complete text of the said amendments is available on the SEBI website, www.sebi.gov.in.

Salient features of those amendments are as under:

- (a) An issuer whose post -issue face value capital does not exceed ten crore rupees shall make Initial Public Offer of specified securities in terms of Chapter XA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations).
- (b) An issuer listed on a SME exchange and whose post- issue face value capital pursuant to further issue of capital does not exceed ten crore rupees shall make further issue of specified securities in terms of Chapter XA of the ICDR Regulations.
- (c) An issuer having post -issue face value capital between ten crore rupees and twenty five crore rupees may make Initial Public Offer and further issue of specified securities in terms of Chapter XA of the ICDR Regulations.
- (d) An issuer making issue of specified securities in terms of Chapter XA of the ICDR Regulations shall be required to list its entire specified securities on the SME exchange.
- (e) An issuer making issue of specified securities in terms of Chapter XA of the ICDR Regulations shall be exempted from the eligibility requirements as laid down under regulations 25, 26 and 27 of the ICDR Regulations.

(f) An issuer with post issue face value capital between Rs 10 crore and Rs 25 crore listed on SME exchange can migrate to Main Board, as specified in the ICDR Regulations and vice-versa, provided they meet the listing requirements of the stock exchange where they propose to list the specified securities and have obtained the shareholders approval in the manner specified in the ICDR Regulations.

(g) An issuer listed on SME exchange proposing to issue further capital pursuant to which their post -issue face value capital may increase beyond Rs. 25 crore shall migrate to the main board, subject to obtaining in-principle approval of the main board before issue of such securities.

(h) An issuer making issue of specified securities in terms of Chapter XA of the ICDR Regulations shall file the offer document with SEBI and SME exchange, in respect of proposed issue, through the merchant banker. No observations would be issued by SEBI on the offer documents filed by the Merchant Banker/s. The offer document shall be made available on the websites of SEBI, the issuer, the merchant banker/s and the SME exchange.

(i) The issue made in terms of Chapter XA of the ICDR Regulations shall be 100% underwritten and the merchant banker/s shall underwrite 15% in their own account. Merchant Banker/s can also enter into agreement with nominated investors to subscribe to the unsubscribed portion of the issue. Such arrangements shall be disclosed in the offer document.

(j) The merchant banker to the issue will undertake market making through a stock broker who is registered as market maker with the SME exchange. The merchant banker shall be responsible for market making for a minimum period of three years from the date of listing of the specified securities. Further, the merchant bankers can also enter into agreement with nominated investors, as defined under ICDR Regulations, to whom the shares bought or sold during the market making process can be transferred. Such arrangements shall be with the prior approval of the SME exchange and disclosed in the offer document.

(k) During the compulsory market making period, the promoters holding shall not be eligible for offering to market makers. However, the promoters holding which are not locked-in in terms of the ICDR can be traded on the SME exchange with the prior approval of the SME exchange, in the manner specified by the SEBI. During the compulsory market making period the buyer of shares from the promoters or persons belonging to promoter group of the issuer shall not be eligible to offer such shares to market makers.

(l) Merchant Banker/s who have the responsibility of market making may, at their option, be represented on the board of the issuer subject to agreement with the issuer in this regard.

(m) The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.

(n) A minimum number of 50 (fifty) investors is required at the IPO stage only. There shall be no continuous requirement of minimum number of shareholders.

(o) A stock broker of the Main Board need not obtain fresh registration for trading on SME platform of such Main Board. Further, no fresh registration

needs to be obtained by a sub-broker, where such registered sub-broker is affiliated to stock broker who is eligible to trade on SME platform.

3. It is hereby further clarified that –

(a) an issuer listed on a recognized stock exchange other than a SME exchange and whose post-issue face value capital pursuant to further issue of securities of the same class does not exceed ten crore rupees will have option to make further issue of specified securities of same class in accordance with Chapter XA of the ICDR Regulations provided that its entire specified securities of the same class shall be listed on the SME exchange.

(b) In case of migration from SME exchange to main board or viceversa, in terms of the ICDR Regulations the issuer shall submit an information memorandum to the Stock Exchange where it is migrating to in the format specified by the SME exchange or the Main Board, as the case may be. However, if migration is on account of further issue of capital through an offer document or placement document in terms of ICDR Regulations the issuer shall not file the information memorandum.

4. Further, the Guidelines for market making for the specified securities listed on the SME exchange have also been issued separately through circular no. CIR/MRD/DP/ 14 /2010 dated April 26, 2010. Complete text of the guidelines is available on the SEBI website, www.sebi.gov.in.

5. The model listing agreement for listing of specified securities issued or migrated on SME exchange, in terms of Chapter XA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 have also been issued through separate circular no. CIR/CFD/DIL/6/2010 dated May 17, 2010. Complete text of the model listing agreement is available on the SEBI website, www.sebi.gov.in.

6. In view of the above policy decisions, it has been decided to make certain changes in the framework for recognition and supervision of SME exchanges/platforms prescribed on November 05, 2008. Accordingly, in supercession to earlier framework of November 05, 2008, the following framework is hereby specified.

A. A company desirous of being recognized as a SME exchange may apply to Market Regulation Department, SEBI, in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (SCRA) read with the provisions of the Securities Contracts (Regulation) Rules, 1957 (the SCRR), subject to the applicant fulfilling the following conditions:

(i) It is a corporatised and demutualised entity and is compliant with requirements of maintaining public shareholding and shareholding restrictions in accordance with Chapters II and III of the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) Regulations, 2006;

(ii) It has a balance sheet networth of atleast Rs. 100 crores;

- (iii) It shall have nation wide trading terminals and an online screen-based trading system, a suitable Business Continuity Plan including a disaster recovery site;
- (iv) It shall have an online surveillance capability which monitors positions, prices and volumes in real time so as to check market manipulation;
- (v) It shall have adequate arbitration and investor grievances redressal mechanism operative from all the four regions of the country.
- (vi) It shall have adequate inspection capability;
- (vii) It shall have the same risk management system and surveillance system as are required for cash market segment of a recognised stock exchange;
- (viii) Information about trades, quantities, and quotes shall be disseminated by the recognized stock exchange in real time to at least two information vending networks which are accessible to investors in the country;
- (ix) The trading system of the stock exchange may be quote driven or a hybrid of quote driven and order driven. The settlement system in the stock exchange shall be the same as that of the cash market of a recognised stock exchange;
- (x) The clearing function of the stock exchange shall be performed by a clearing corporation/ clearing house;
- (xi) The minimum lot size for trading on the stock exchange shall be one lakh rupees.

B. The above eligibility criteria shall *mutatis mutandis* apply to recognized stock exchanges having nation wide trading terminals and which desires to set up a trading platform for listing of the specified securities issued in terms of Chapter XA of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. Such recognised stock exchange shall file an application demonstrating its compliance with the conditions mentioned in subpara (i) to (xi) of para 6 above alongwith the proposed Rules, Regulations and Byelaws for the SME platform. Such a platform can be operationalised by the recognised stock exchange only after obtaining prior approval of SEBI.

C. The Stock Exchanges are advised to:

- a. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision.
- b. bring the provisions of this circular to the notice of the member brokers/clearing members of the Exchange and also to disseminate the same on the website.

D. This circular is issued under Section 11 of the Securities and Exchange Board of India Act 1992, read with Section 4 of the Securities Contracts (Regulation) Act, 1956.

Yours faithfully,
D. Rajesh Kumar
Deputy General Manager
+91-22-26449242

Tax Updates

Circular on Widening of existing road – definition of a new infrastructure facility – clarification

Circular No. 4 /2010 dt.18th May 2010

Widening of existing road – definition of a new infrastructure facility – clarification regarding.

References have been received by the Board as to whether widening of existing roads constitutes creation of new infrastructure facility for the purpose of Section 80IA (4)(i) of the Income Tax Act, 1961.

Section 80IA (4)(i) provides for a deduction to an undertaking engaged in developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility subject to satisfaction of the conditions laid down in the Section. The Explanation to subsection 80IA(4)(i) states that for the purpose of this clause, infrastructure facility means inter alia: -

“(a) a road including toll road, a bridge or a rail system;
(b) a highway project including housing or other activities being an integral part of the highway project;”

The issue has been examined by the Board. It has been decided that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of Section 80IA (4)(i). However, simply relaying of an existing road would not be classifiable as a new infrastructure facility for this purpose.

Kindly visit <http://www.incometaxindia.gov.in/> for further more details.

Notifications on Central Excise Rules, 2002 and CENVAT credit Rules, 2004

(i) Notification No. 20 / 2010 - Central Excise dt. 18th May 2010.

In the Central Excise Rules, 2002,-

(a) in rule 12, after sub-rule (2), after clause (a), the following proviso shall be inserted, namely: -

"Provided that where an assessee has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the said Annual Financial Information Statement electronically."

(b) in rule 17, after sub-rule (3), following proviso shall be inserted, namely: -

"Provided that where an assessee has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall submit the said monthly return electronically."

(ii) Notification No. 21 / 2010-Central Excise dt. 18th May 2010.

In the CENVAT Credit Rules, 2004,-

(a) In Rule 9, after sub-rule (8), the following proviso shall be inserted, namely: -

"Provided that the first stage dealer or second stage dealer, as the case may be, shall submit the said return electronically."

(b) In rule 9A,-

(i) In sub-rule (1), after the proviso, the following proviso shall be inserted, namely: -

"Provided further that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file such declaration electronically."

(ii) In sub-rule (3), the following proviso shall be inserted, namely: -

"Provided that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the said monthly return electronically:"

Kindly visit <http://www.cbec.gov.in/cae1-english.htm> for further information.

