



**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

**August 13, 2010**

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# Forthcoming Programmes

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

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## 38<sup>TH</sup> NATIONAL CONVENTION OF COMPANY SECRETARIES

*Principal Sponsor*  
**MCX<sup>2</sup>SX**  
India's New Stock Exchange

*Dates*  
September 2-3-4, 2010

*Venue*  
Swissotel Kolkata,  
City Centre, New Town, Rajarhat, Kolkata

*Co-Sponsor*  
**ESSAR**

**Theme : India Inc. and Inclusive Growth**

The **38<sup>th</sup> National Convention of Company Secretaries** is being held on Thursday, Friday and Saturday, September 2-3-4, 2010 at

Swissôtel Kolkata, City Centre New Town, Action Area 2, D. Plot No. 11/5, New Town, Rajarhat, Kolkata on the theme **"India Inc. and Inclusive Growth"**.

The Indian economy, which has over the last six decades passed through various phases of growth, is now one of the fastest growing economies of the world. The growth process is more wider and inclusive then ever before .Corporate being engines of inclusive growth interweaving the social and environmental concern in their overall business strategies. Almost all constituents of successful India Inc. have linked their business strategy with society for inclusive growth. The Company Secretaries being more closely associated with the decision making process in the companies should now assume the role of a leader – a driving force behind formulating business strategies towards inclusive growth.

### DELEGATE FEE

	Payment By Cash, Credit Card (HQ/RC), Demand Draft or Pay Order (Rs)
Members	5000
Non-Members	5500
Company Secretary in Practice	4500
Senior Members (60 years &	4500

above)	
Members admitted after 31.12.2007	4500
Students	4000
Foreign	US\$100
Spouse	4000
Licentiates	4500

The detailed brochure and delegate registration form for the Convention is available at the following link:

<http://www.icsi.edu/webmodules/LinksOfWeeks/38TH%20NATIONAL%20CONVENTION%20OF%20COMPANY%20SECRETARIES.pdf>

The registration form duly completed along with a crossed cheque (at par)/ demand draft / pay order drawn in favour of *The Institute of Company Secretaries of India* payable at **New Delhi** may please be sent to The Institute of Company Secretaries of India, C-37, Sector 62, Institutional Area, Noida - 201309.

I cordially invite you to participate in this annual mega event of the Institute.

I look forward to meet you at the National Convention at the City of Palaces.

Yours sincerely,

**CS N K JAIN**  
Secretary & CEO



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# SEBI Updates

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**“Views solicited on Report of the Takeover Regulations  
Advisory Committee”**

SEBI has placed on its website Report of the Takeover Regulations Advisory Committee

We seek your views/suggestions on the same and would appreciate to receive the same in the format given below on [sonia.baijal@icsi.edu](mailto:sonia.baijal@icsi.edu) by August 20, 2010 for sending to SEBI.

Sl. No.	Draft Provision / Recommendation of the Committee	Comment	Rationale
1.	Insert reference to the draft provision / paragraph in the Committee's Report	Provide your comment here	Specify your reasons / rationale for the comment

**NOTE:** The [report of the Committee](#) .

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## **Updation of investor related documents**

### **CIRCULAR**

Cir / IMD / DF / 9 / 2010

August 12, 2010

#### **All Mutual Funds, Asset Management Companies (AMCs)**

Sir/Madam,

#### **Sub: Updation of investor related documents**

1. SEBI vide circular No. SEBI/IMD/CIR No.12 /186868 /2009 dated December 11, 2009 has inter alia advised mutual funds to confirm whether all the investor related documents are maintained/ available with them. Further in case the investor related documentation was incomplete, the trustees of the mutual funds were advised not to make further payment to such distributors till full compliance/ completion of the steps enumerated in the said circular and to send a status to SEBI as and when process is completed to satisfaction.

2. SEBI has not received any confirmation from the trustees of the mutual funds on the completion of the process as mandated in the said circular. Thus it appears that all the investor related documentation is not available with the AMCs. It has been observed that due to such incomplete documentation investors' rights to approach the AMCs directly are restricted and investors are forced to depend on the distributors for executing any financial or non-financial transactions.

3. In order to ensure that investors have unrestricted access to AMCs and to enable AMCs to provide prompt investor service including execution of investors' financial or non-financial transactions, all mutual funds/ AMCs are directed that:

All new folios/ accounts shall be opened only after ensuring that all investor related documents including account opening documents, PAN, KYC, PoA (if applicable), specimen signature are available with AMCs/RTAs and not just with the distributor.

For existing folios, AMCs shall be responsible for updation of the investor related documents including account opening documents, PAN, KYC, PoA (if applicable), specimen signature by November 15, 2010.

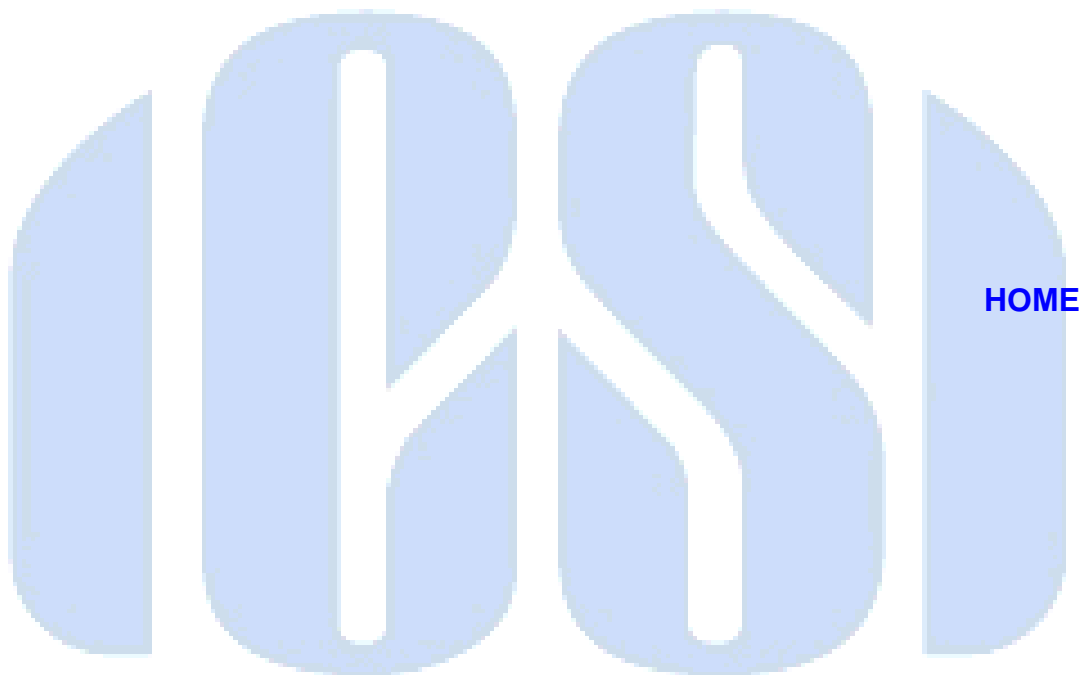
4. The trustees shall submit a confirmation after they receive certification from an Independent auditor on completion of the said process latest by November 22, 2010.

5. Mutual Funds/Asset Management Companies shall comply with the above requirements in letter and spirit.

6. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, read with the provisions of Regulation 77 of SEBI (Mutual Funds) Regulations, 1996, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,

**Asha Shetty**  
**Deputy General Manager**  
**Tel no. 022-26449258**  
**Email-[ashas@sebi.gov.in](mailto:ashas@sebi.gov.in)**





## **Arbitration Mechanism in Stock Exchanges**

### **CIRCULAR**

**CIR/MRD/DSA/24/2010**

**August 11, 2010**

**To**

**The Managing Director/Executive Director  
of all Stock Exchanges.**

Dear Sir / Madam,

### **Subject: Arbitration Mechanism in Stock Exchanges**

1. In consultation with the stock exchanges, it has been decided to streamline the arbitration mechanism available at stock exchanges for arbitration of disputes (claims, complaints, differences, etc.) arising between a client and a member (Stock Broker, Trading Member and Clearing Member) across various market segments.

2. A stock exchange shall provide an arbitration mechanism for settlement of disputes between a client and a member through arbitration proceedings in accordance with the provisions of this Circular read with Section 2(4) of the Arbitration and Conciliation, Act, 1996.

#### **3. Maintenance of a Panel of Arbitrators**

3.1 A stock exchange shall maintain a panel of arbitrators. The number of arbitrators in the panel shall be commensurate to the number of disputes so that an arbitrator handles a reasonable number of references simultaneously and all arbitration references are disposed of within the prescribed time.

3.2 The stock exchange shall have a set of fair and transparent criteria for inclusion of names in the panel of arbitrators.

3.3 While deciding to include a particular person in the panel of arbitrators, the stock exchange shall take into account the following factors:

- i. age,
- ii. qualification in the area of law, finance, accounts, economics, management, or administration, and
- iii. experience in financial services, including securities market.

3.4 The name of a person shall be included in the panel after obtaining:

- i. a declaration that he has not been involved in any act of fraud, dishonesty or moral turpitude, or found guilty of any economic offence,
- ii. disclosure of the nature of his association with securities market,
- iii. disclosure of the names of his dependents associated with the securities market as member, sub-broker or authorized person, and

iv. an undertaking that he shall abide by the code of conduct prescribed in this circular.

**3.5** The stock exchange shall provide at least seven days of continuing education to every arbitrator each year.

**3.6** The stock exchange shall have a mechanism to appraise the performance of arbitrators and reconstitute the panel based on such appraisal atleast once a year.

#### **4. Code of Conduct for Arbitrators**

An arbitrator shall –

- i. act in a fair, unbiased, independent and objective manner;
- ii. maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of his duties;
- iii. disclose his interest or conflict in a particular case, i.e., whether any party to the proceeding had any dealings with or is related to the arbitrator;
- iv. not engage in acts discreditable to his responsibilities;
- v. avoid any interest or activity which is in conflict with the conduct of his duties as an arbitrator;
- vi. avoid any activity that may impair, or may appear to impair, his independence or objectivity;
- vii. conduct arbitration proceedings in compliance with the principles of natural justice and the relevant provisions of the Arbitration and Conciliation Act, 1996, the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Rules, Regulations and Bye-laws framed thereunder and the circulars, directions issued by the Government / SEBI;
- viii. endeavour to pass arbitral award expeditiously and in any case not later than the time prescribed in this circular; and
- ix. pass reasoned and speaking arbitral awards.

#### **5. Arbitration**

**5.1** The limitation period for filing an arbitration reference shall be governed by the law of limitation, i.e., The Limitation Act, 1963.

**5.2** An arbitration reference for a claim / counter claim up to Rs.25 lakh shall be dealt with by a sole arbitrator while that above Rs.25 lakh shall be dealt with by a panel of three arbitrators.

**5.3** The stock exchange shall ensure that the process of appointment of arbitrator(s) is completed within 30 days from the date of receipt of application from the applicant.

**5.4** The arbitration reference shall be concluded by way of issue of an arbitral award within four months from the date of appointment of arbitrator(s).

**5.5** The Managing Director/ Executive Director of the stock exchange may for sufficient cause extend the time for issue of arbitral award by not more than two months on a case to case basis after recording the reasons for the same.

#### **6. Appellate Arbitration**

**6.1** A party aggrieved by an arbitral award may appeal to the appellate panel of arbitrators of the stock exchange against such award.

**6.2** An appeal before the appellate panel of arbitrators may be filed within one month from the date of receipt of arbitral award.

**6.3** The appellate panel shall consist of three arbitrators who shall be different from the ones who passed the arbitral award appealed against.

**6.4** The stock exchange shall ensure that the process of appointment of appellate panel of arbitrators is completed within 30 days from the date of receipt of application for appellate arbitration.

**6.5** The appeal shall be disposed of within three months from the date of appointment of appellate panel of such appeal by way of issue of an appellate arbitral award

**6.6** The Managing Director/ Executive Director of the stock exchange may for sufficient cause extend the time for issue of appellate arbitral award by not more than two months on a case to case basis after recording the reasons for the same.

**6.7** A party aggrieved by the appellate arbitral award may file an application to the Court of competent jurisdiction in accordance with Section 34 of the Arbitration and Conciliation Act, 1996.

## **7. Arbitration Fees**

**7.1** Each of the parties to arbitration [as mentioned under item (5) above], shall deposit an amount, as may be prescribed by the stock exchange, at the time of making arbitration reference. The deposits (exclusive of statutory dues – stamp duty, service tax, etc.) shall not exceed the amount as indicated under:

<b>Amount of Claim / Counter Claim, whichever is higher (Rs.)</b>	<b>If claim is filed within six months</b>	<b>If claim is filed after six months</b>
≤ 10,00,000	1.3% subject to a minimum of Rs.10,000	3.9% subject to a minimum of Rs.30,000
> 10,00,000- ≤ 25,00,000	Rs. 13,000 plus 0.3% amount above Rs. 10 lakh	Rs. 39,000 plus 0.9% amount above Rs. 10 lakh
> 25,00,000	Rs. 17,500 plus 0.2 % amount above Rs. 25 lakh subject to maximum of Rs. 30,000	Rs. 52,500 plus 0.6 % amount above Rs. 25 lakh subject to maximum of Rs. 90,000

Note: six months shall be computed from the end of the quarter during which the disputed transaction(s) were executed/ settled, whichever is relevant for the dispute.

**7.2** A client, who is a party to the arbitration for a claim/counter claim upto Rs. 10 lakh, shall be exempt from the deposit provided the arbitration reference for the same is filed within six months from the end of the quarter during which the disputed transaction(s) were executed/ settled.

**7.3** On issue of the arbitral award, the stock exchange shall refund the deposit, if any, to the party in whose favor the award has been passed and appropriate the deposit, if any, made by the party, against whom the award has been passed, towards arbitration fees.

**7.4** A party filing an appeal before the appellate panel [as mentioned under item 6 above] shall pay a fee not exceeding Rs. 30,000, as may be prescribed by the stock exchange, in addition to statutory dues (stamp duty, service tax, etc) along with the appeal.

## **8. Place of Arbitration**

**8.1** The Stock Exchanges having nationwide terminals, such as National Stock Exchange of India Ltd., Bombay Stock Exchange Ltd., MCX Stock Exchange Ltd., and United Stock Exchange of India Ltd., shall provide arbitration facility (arbitration as well as appellate arbitration) at all four regional centres (Delhi, Mumbai, Kolkata and Chennai). The arbitration and appellate arbitration shall be conducted at the regional centre nearest to the client. The application under Section 34 of the Arbitration and Conciliation Act, 1996, if any, against the decision of the appellate panel shall be filed in the competent Court nearest to such regional centre.

**8.2** Other stock exchanges shall provide the arbitration facility, including appellate arbitration, at the place where it is located.

## **9. Implementation of Arbitral Award in favour of Clients**

**9.1** In case the arbitral / appellate arbitral award is in favour of the client, the stock exchange shall, on receipt of the same, debit the amount of the award from the security deposit or any other monies of the member (against whom an award has been passed) and keep it in a separate escrow account.

**9.2** The stock exchange shall implement the arbitral award, by making payment to the client, along with interest earned on the amount that has been set aside, as soon as the time for preferring an appeal before the appellate panel of arbitrators has expired and no appeal has been preferred.

**9.3** The stock exchange shall implement the appellate arbitral award, by making payment to the client, along with interest earned on the amount that has been set aside, as soon as

- a. the time for making an application to a Court to set aside such appellate arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 has expired, and no application has been made, or
- b. when an application to a Court to set aside such appellate arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, having been made, it has been refused by such Court, or

c. an application to a Court to set aside such appellate arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, having been made, but where no stay has been granted by such Court within a period of three months from the date on which the party making that application had received the appellate arbitral award.

**10. Record and Disclosures**

**10.1** The stock exchange shall preserve the following documents related to arbitration:

- i. the arbitral and appellate arbitral award with acknowledgements, confirming receipt of award by the disputing parties, permanently;
- ii. other records pertaining to arbitration for five years from the date of arbitral award, appellate arbitral award or Order of the Court, as the case may be; and
- iii. register of destruction of records relating to (ii) above, permanently.

**10.2** The stock exchange shall disclose on its website, details of disposal of arbitration proceedings as per format A and details of arbitrator-wise disposal of arbitration proceedings as per format B.

**10.3** The stock exchange shall continue to disclose on their website the arbitration awards (issued since April 1, 2007), as advised vide circular dated April 01, 2010, in format C.

**11.** The recognized stock exchanges are advised to:-

- i. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately;
- ii. bring the provisions of this circular to the notice of the members of the stock exchange and also to disseminate the same through their website; and
- iii. communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Reports to SEBI.

**12.** SEBI inspection of stock exchange shall cover implementation of this circular.

**13.** This Circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and shall come into effect from September 1, 2010.

**14.** This circular supersedes the following SEBI Circulars:-

- i. SMDRP/POLICY /CIR - 22 /99 dated July 09, 1999
- ii. SMD/Policy/Cir-06/2002 dated March 27, 2002
- iii. MRD/ Policy/Cir-18/2002 dated August 28, 2002
- iv. MRD/ Policy/Cir-26/2002 dated October 30, 2002
- v. SEBI/SMD/SE/13 /2003/10/04 dated April 10, 2003
- vi. MRD/DSA/Arb/4623/2004 dated March 05, 2004
- vii. MRD/DSA/SE/CIR-18/2009 dated December 2, 2009

**15.** This circular modifies provisions relevant to arbitration, contained in the following SEBI Circulars:-

- i. SMD/POLICY/CIRCULAR/3-97, dated March 31, 1997

August 13, 2010

- ii. MRD/DoP/SE/Cir-10/2009 dated September 3, 2009
- iii. SEBI/MRD/DSA-OIAE/Cir-09/2010 dated April 1, 2010
- iv. CIR/MRD/DSA/10/2010 dated April 6, 2010

16. This Circular is available on SEBI website at [www.sebi.gov.in](http://www.sebi.gov.in).

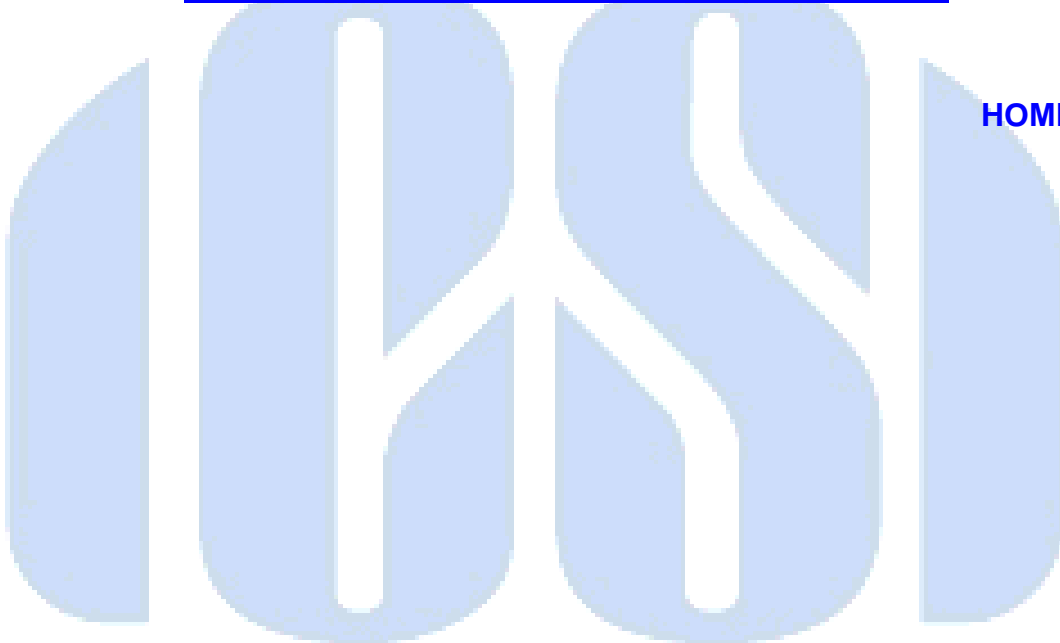
Yours faithfully,

**Rajesh Kumar D**  
**Deputy General Manager**  
**+91-22-26449242**  
[rajeshkd@sebi.gov.in](mailto:rajeshkd@sebi.gov.in)

**CC: All SEBI recognized Investor Associations**

**For Formats: <http://www.sebi.gov.in/circulars/2010/cirmrd24.pdf>**

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# RBI Updates

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## **External Commercial Borrowings (ECB) Policy – Liberalisation**

**RBI/2010-11/ 167**  
**A.P. (DIR Series) Circular No.08**

**August 12, 2010**

To

All Category - I Authorised Dealer Banks

Madam / Sir,

### **External Commercial Borrowings (ECB) Policy – Liberalisation**

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to para 2 (iv) of the A.P. (DIR Series) Circular No. 46 dated January 02, 2009 relating to External Commercial Borrowings (ECB) Policy.

2. At present, entities in the services sectors viz., Hotels, Hospitals and Software are allowed to avail of ECB up to USD 100 million per financial year under the Automatic Route, for foreign currency and/or Rupee capital expenditure for permissible end-uses. On a review, it has now been decided to consider applications from the corporates in the Hotel, Hospital and Software sectors to avail of ECB beyond USD 100 million under the Approval Route, for foreign currency and / or Rupee capital expenditure for permissible end-uses. The proceeds of the ECB should not be used for acquisition of land.

3. The modifications to the ECB guidelines will come into force with immediate effect. All other norms of the extant ECB policy relating to eligible borrower, recognized lender, end-use, all-in-cost ceiling, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements would continue to apply in the case of ECBs availed of by the aforesaid sectors under the Automatic Route as indicated above.

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

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

Yours faithfully,  
**(Salim Gangadharan)**  
**Chief General Manager-in-Charge**

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