



**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 17, 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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38TH NATIONAL CONVENTION OF COMPANY SECRETARIES

Principal Sponsor

MCX'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

Dear Professional Colleague,

The **38th 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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Recognition to Members Updates

Ph.D Programme for Members from the University of Kalyani

The University of Kalyani, West Bengal, through the Regulations relating to Doctoral Degree, has extended the facility to members of the Institute who are graduates in any discipline to pursue Ph.D Programme. The extract from the relevant Regulations regarding eligibility, is as under:

"Reg.2 (D.D.) (5) A candidate, who has obtained the Master's degree in any discipline from this University or from any other University/Institute recognized by this University, or such other degree as may be considered equivalent for this purpose by the university or **a candidate who is a graduate in any discipline as well as a professionally qualified Chartered Accountant/Cost and Works Accountant/Company Secretary under the respective Acts of the Parliament** , shall be eligible to appear in the entrance test for Ph.D. programme of this University.

For further information:

[http://www.klyuniv.ac.in/upload/1265714268_Ph\[1\].pdf](http://www.klyuniv.ac.in/upload/1265714268_Ph[1].pdf)

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SEBI Updates

**“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 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](#) .

RBI Updates

Regulatory Framework for Core Investment Companies (CICs)

RBI/2010-11/168

DNBS (PD) CC.No. 197/03.10.001/2010-11

August 12, 2010

All Core Investment Companies

Dear Sir,

Regulatory Framework for Core Investment Companies (CICs)

The Bank had announced in the Annual Policy 2010-2011 that companies which have their assets predominantly as investments in shares for holding stake in group companies but not for trading, and also do not carry on any other financial activity, i.e., Core Investment Companies, (CICs), justifiably deserve a differential treatment in the regulatory prescription applicable to Non-Banking Financial Companies which are non deposit taking and systemically important. In order to rationalize the policy approach for CICs, such companies having an asset size of Rs.100 crore and above would be treated as systemically important core investment companies. They would require registration with the Reserve Bank and would be given exemption from maintenance of net owned fund and exposure norms subject to certain conditions. Consequent to the announcement, draft guidelines had been placed on the RBI website on April 21, 2010. The feedback received from the market participants have been considered and it has been decided to bring into effect the following regulatory framework for Core Investment Companies.

2. Core Investment Companies (CICs) were not considered as carrying on the business of acquisition of shares and securities in the following circumstances, namely,

- i) not less than 90% of their assets were in investments in shares for the purpose of holding stake in the investee companies;
- ii) they were not trading in these shares except for block sale (to dilute or divest holding);

- iii) they were not carrying on any other financial activities; and
- iv) they were not holding / accepting public deposits.

As such, companies fulfilling the above criteria were not required to obtain Certificate of Registration (COR) from RBI under Section 45 IA of the RBI Act 1934. It has been found in practice, that it is very difficult to determine whether a company has invested in the shares of another company for the purpose of holding stake or for the purpose of trade. Even where initially investments had been made in some cases for holding stake in the investee company, for various reasons these shares were sold or additional shares were purchased. Such absence of clarity is not in the interest of the system. It was therefore decided that investing in shares of other companies, even for the purpose of holding stake should also be regarded as carrying on the business of acquisition of shares in terms of Section 45I(c) (ii) of RBI Act.

3. Systemically Important NBFCs

In 2006, in view of the systemic risk arising from access to public funds such as bank borrowings, CPs, etc, by NBFCs, and their interconnectedness with the financial system, the focus of regulatory concern widened to include non deposit taking NBFCs also. Accordingly, non deposit taking NBFCs with an asset size of Rs. 100 crore and more as per the last audited balance sheet were defined as systemically important, (NBFCs-ND-SI) and a regulatory framework was put in place for them vide Circular No 86 dated December 12, 2006

4. Systemic Importance of Core Investment Companies

For the reasons stated in para 1 above, investing in shares of other companies, even for the purpose of holding stake should be regarded as carrying on the business of NBFI. In view of this, CICs will be required to obtain certificate of registration under Section 45-IA of the Reserve Bank of India Act, 1934. However, CICs with an asset size of less than Rs.100 crore would be granted exemption from the applicability of Section 45-IA of the Reserve Bank of India Act, 1934. In view of the systemic implications of access to public funds such as funds raised through Commercial Paper, debentures, inter-corporate deposits and other borrowings by CICs having asset size of 100 crore or above, such systemically important CIC will be required to obtain CoR under Section 45-IA of the Reserve Bank of

India Act and be governed by the provision of Reserve Bank of India Act, 1934 and the direction issued by the Reserve Bank from time to time.

5. Constraints faced by Core Investment Companies

In view of the specificities of the business model of CICs, viz, holding stake in group companies and funding group concerns, CICs find it difficult to comply with the extant NOF requirements and exposure norms for NBFCs specified by the Reserve Bank. These issues have been considered while formulating the regulatory framework for CICs.

6. Regulatory Framework for Core Investment Companies

- i) It is proposed to exempt Core Investment Companies (CIC) with an asset size of less than Rs.100 crores from the requirements of registration with RBI. For this purpose all CICs belonging to a Group will be aggregated.
- ii) CICs with an asset size of Rs 100 crores or more will be considered as Systemically Important Core Investment Companies (CICs-ND-SI) and would be required to obtain Certificate of Registration (COR) from RBI under Section 45-IA of the Reserve Bank of India Act, 1934 even if they have been advised in the past that registration was not required.
- iii) Capital Requirements: Every CIC-ND-SI shall ensure that at all times it maintains a minimum Capital Ratio whereby its Adjusted Net Worth shall not be less than 30% of its aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items as on the date of the last audited balance sheet as at the end of the financial year.
- iv) Leverage Ratio: Every CIC-ND-SI shall ensure that its outside liabilities at all times shall not exceed 2.5 times its Adjusted Net Worth as on the date of the last audited balance sheet as at the end of the financial year.
- v) Exemptions: A CIC-ND-SI which adheres to the requirements regarding capital requirements and leverage ratio as specified at (iii) and (iv) above, may to the extent necessary, be exempted from compliance with:-

- i) maintenance of statutory minimum Net Owned Fund (NoF) and
- ii) requirements of "Non-Banking Financial (Non-Deposit Accepting or holding) Companies Prudential Norms(Reserve Bank) Directions, 2007" including requirements of capital adequacy and exposure norms.

7. Definitions

For the purposes of these guidelines: -

1) Adjusted Net Worth means: -

- i) the aggregate as appearing in the last audited balance sheet as at the end of the financial year of :-

- (A) Owned Funds as defined in Non Banking Financial (Non Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007; and

- (B) 45% of the amount standing to the credit of the Revaluation Reserve arising from revaluation of investments in quoted investments, if any,

- ii) as increased by :-

- (A) 50% of the unrealized appreciation in the book value of quoted investments as at the date of the last audited balance sheet as at the end of the financial year (such appreciation being calculate, as the excess of the aggregate market value of such investments over the book value of such investments); and

- (B) the increase if any, in the equity share capital since the date of the last audited balance sheet.

- iii) as reduced by :-

- (A) the amount of diminution in the aggregate book value of quoted investments (such diminution being calculated as the excess of the book value of such investments over the aggregate market value of such investments) and

- (B) the reduction, if any, in the equity share capital since the date of the last audited balance sheet.

(2) Core Investment Company means: A NBFC carrying on the business of acquisition of shares and securities which satisfied the following conditions:- (i) it holds not less than 90% of its Total Assets in the form of investment in

- equity shares, preference shares, debt or loans in group companies;
- (ii) its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;
 - iii) it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
 - iv) it does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI act, 1934 except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies.
- (3) Market Value of Quoted Investments means: the average of the highs and lows of the quoted prices of the investments, on a recognized stock exchange where the investment is most actively traded, during the period of 26 weeks immediately preceding the end of the financial year at which date the last audited balance sheet is available.
- (4) Outside Liabilities means: total liabilities as appearing on the liabilities side of the balance sheet excluding 'paid up capital' and 'reserves and surplus' but including all forms of debt and obligations having the characteristics of debt whether created by issue of hybrid instruments or otherwise and value of guarantees issued whether appearing on the balance sheet or not.
- 5) Total Assets means: total assets as appearing on the assets side of the balance sheet but excluding :
- (i) cash and bank balances;
 - ii) investment in money market instruments;
 - iii) advance payments of taxes; and
 - iv) deferred tax asset

8. Transition Period

- (i) All CICs-ND-SI, irrespective of whether they were specifically exempted in the past from registration with the RBI or not, should apply to the RBI for obtaining the CoR within a period of six months from the date of the Notification.

(ii) In order to operationalize the above dispensation in a non-disruptive manner, companies which apply for CoR within the stipulated time of six months may continue to carry on the existing business till the disposal of their application by RBI.

(iii) It is further clarified that the companies which fail to apply within the stipulated period of six months will be regarded as contravening the provisions of Section 45IA of the Reserve Bank of India Act, 1934 if they are regarded as carrying on the business of Core Investment Companies-ND-SI as described above.

(iv) Companies which presently have an asset size of less than Rs 100 crore would be required to apply to RBI for COR within three months of the date of achieving a balance sheet size of Rs 100 crore.

9. Action plan to comply with Conditions

(i) CICs-ND-SI applying for COR who do not meet the conditions stipulated in para 6 above, may approach the Regional Office of the RBI in whose jurisdiction they are registered, with an action plan for compliance with these conditions, in order to avail the exemptions stated in para 6(v).

(ii) RBI may examine the action plan of such CICs-ND-SI as have applied for COR and impose such conditions and restrictions as it deems fit.

10. Submission of annual statutory auditors certificate

CICs-ND-SI will be required to submit an annual certificate from their statutory auditors regarding compliance with the above guidelines within one month from the date of finalisation of the balance-sheet.

Yours sincerely,
(Uma Subramaniam)
ChiefGeneralManager-in-Charge

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Forward Markets Commission Updates

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GUIDELINES FOR MEMBER OF COMMODITY EXCHANGES IN JOINT VENTURES AND WHOLLY OWNED SUBSIDIARIES ABROAD

Forward Markets Commission Department of Consumer Affairs Ministry of Consumer Affairs, Food and Public Distribution

F.NO.11/29/2009-IR-II

Dt:21.06.2010

GUIDELINES FOR MEMBER OF COMMODITY EXCHANGES IN JOINT VENTURES AND WHOLLY OWNED SUBSIDIARIES ABROAD

INTRODUCTION

1.1 The RBI vide its circular A.P.(Dir Series) Circular No.6 dated 06.09.2006 (Overseas Direct Investment by Regulated Entities in the Financial Sector) has clarified that trading in Commodities Exchanges overseas and setting up Joint Ventures/Wholly Owned Subsidiaries (JV/WOS, in short) for trading in overseas Commodities Exchanges will be reckoned as financial services activity and will require clearance from the Forward Markets Commission(FMC, in short)

1.2 In the light of the above, the following guidelines are issued to elaborate the procedure for obtaining approval/NOC from the FMC.

1.3 These guidelines are in supersession of the guidelines issued by the FMC on 03.08.2006.

1.4 These guidelines shall be supplementary to the existing Regulations/ Notifications/ Circulars/ Guidelines/ Directions issued or that would be issued from time to time, under FEMA, 1999 by the RBI/Central Government.

APPLICABILITY

2.1 These guidelines shall apply to only such persons who have been Members of a Recognized Association as per the provisions of Section 6 of the Forward Contract (Regulations) Act, 1952 (FCRA, 1952) for at least one year.

2.2 These guidelines shall also apply to those persons who will approach the Commission for revalidation of their NOC issued earlier.

- 2.3 The proposed JV/WOS should not be engaged in any activity other than trading on Commodity Futures Exchange(s) abroad except similar or related financial services.

DEFINITIONS

- 3.1 "Commission" means The Forward Markets Commission as defined in Section 3 of the Forward Contracts (Regulation) Act, 1952;
- 3.2 "Recognised Association" or "Commodity Exchange" means an association as defined in Section 2 (j) of the Forward Contracts (Regulation) Act, 1952 and recognised under Section 6 of the Forward Contracts (Regulation) Act, 1952..
- 3.3 "FCRA, 1952" means the Forward Contracts (Regulation) Act, 1952 and "FCRR, 1954" means the Forward Contract (Regulation) Rules, 1954.
- 3.4 (a) For the purposes of these guidelines, other words and terms used shall have the same meaning that have been assigned to them respectively under the Regulations/ Notifications/Circulars/Guidelines/Directions issued under FEMA, 1999 by the RBI/Central Government or that may be issued from time to time;
- (b)The words and expressions used but not defined in those Regulations/ Notifications/Circulars/Guidelines/Directions issued under FEMA, 1999 by the RBI/Central Government shall have the same meaning respectively assigned to them in the applicable Acts.

**CONDITIONS PRECEDENT FOR SETTING UP A WHOLLY OWNED
SUBSIDIARY BY A MEMBER OF RECOGNISED ASSOCIATIONS**

- 4.1 Applicants desirous of setting up the WOS/JV shall necessarily have to be a Member of a National Commodity Exchange recognized in terms of the provisions of Section 6 of the FCRA, 1952 for at least one year.
- 4.2 The applicant member should have a minimum networth of Rs.5 Crore for the period immediately preceding three consecutive financial years. However, the Commission reserves the right to relax this condition in genuine cases purely on merit by recording reasons to that effect.
- 4.3 The applicant member should have a proven track record in respect of redressal of complaints / grievances from its clients.

- 4.4 The overseas subsidiary shall be incorporated as a separate legal entity and shall obtain necessary approvals from the respective overseas regulator(s) for undertaking trading in commodities derivatives abroad.
- 4.5 The overseas regulator with whom the subsidiary of the intermediary is desirous of getting registered should be a signatory to the IOSCO Multilateral MOU to ensure that cross border co-operation and information sharing is possible between FMC and the other regulatory body.
- 4.6 The applicant member shall necessarily seek the necessary confirmation and approval of Reserve Bank of India for setting up a Wholly Owned Subsidiary abroad.
- 4.7 The FMC shall be promptly informed of any adverse developments in the activities of the applicant member or its overseas subsidiary in the event of :-
- a. any overseas regulatory action against the applicant member or its subsidiary entities for its activities abroad; or
 - b. any event which may have an impact on the solvency of the applicant member.
- 4.8 The applicant member shall maintain an arm's length relationship between the activities of its own and those of its overseas subsidiary. Such relationship shall be maintained in terms of key personnel, infrastructure, segregation of books and records, independent regulatory control and supervisory mechanism etc.
- 4.9 The applicant member shall put in place appropriate checks and balances to avoid conflict of interest of any kind between its own activities and those of the overseas entities for which approval has been obtained from FMC.
- 4.10 The applicant member shall give a declaration to the effect that neither the applicant member nor its proprietor nor any of its promoters, directors, partners etc. as the case may be, has been convicted by a court for any offence involving moral turpitude or any economic offence, or any criminal offence under any law.
- 4.11 A certificate from the concerned (domestic) Commodity Exchange that no serious irregularities were detected in respect of the activities of the applicant member by the Exchange during the immediately preceding three financial years shall be submitted along with the application form.
- 4.12 The investment proposed to be made in WOS/JV will no more form part of the net worth of the applicant member. The member will, however, be required

to maintain the net worth criteria as applicable in accordance with the provisions of the bye-laws of the respective Commodity Exchanges of which it is a member and ensure that pursuant to investing in the overseas entities, the net worth in respect of the member with the Commodity Exchange(s) is maintained at all times.

4.13 The applicant member shall undertake to strictly follow and comply with all the legal and statutory requirements and obligations as may be laid down by the Government/regulatory authorities both in India and abroad from time to time with regard to its operations as well as the operations of its overseas subsidiaries/entities.

4.14 The NOC granted to the applicant member shall have a validity period of six months from the date of issue of the NOC.

4.15 In case where the member applicant makes an application for renewal of NOC, the same shall be made at least 15 days in advance before the expiry of the current NOC granted to it. Any application for renewal received after the aforesaid time limit will be treated as a fresh application.

4.16 The member applicant shall undertake to submit a copy of the Annual Performance Report of the said JV/WOS to FMC.

4.17 The applicant member shall undertake to submit to the FMC, a self-attested copy of the registration certificate of the said JV/WOS with the overseas Commodity Exchange in which it intends to do commodity derivatives trading.

4.18 The applicant member shall undertake to submit to FMC, the statement of all its financial transactions with the said WOS / JV in the prescribed format at the end of each Financial Year latest by 30th April of the following financial year.

4.19 No operations of the WOS/JV will be conducted from the Indian Territory.

4.20 The commodity derivatives market activities of the applicant member shall continue to be governed by the provisions of the FCRA, 1952 and the regulations made thereunder, the directives of the Central Government or the FMC, as the case may be, and the bye-laws rules, regulations, directives and notifications of the respective Commodity Exchange(s) of which the applicant is a member

4.21 Nothing provided under these guidelines shall obviate the need for specific regulatory compliance by the registered entity warranted by respective provisions of the various Acts, rules and regulations, etc in place from time to

time and directives issued by any other competent Authority/Government, by what ever name called, in the respective jurisdiction in India and abroad.

4.22 The NOC granted under these guidelines is subject to modification or revocation in future at any time by the FMC, in case the FMC determines that such action is necessary or appropriate in furtherance to the purpose of the FCRA, 1952 and the FCRR, 1954.

SUSPENSION, WITHDRAWAL OR CANCELLATION OF NOC GRANTED

5.1 The FMC reserves the right to suspend, withdraw or cancel the NOC in case any serious irregularities are detected after the issue of NOC.

5.2 In the event of non-compliance of any of the conditions of NOC or the regulatory requirements, FMC shall suo-moto either withdraw or cancel the NOC granted or suspend the operation of the NOC till the compliance is made, and refer the matter to Reserve Bank of India for further necessary action in respect of the overseas WOS / JV.

Anupam Mishra
Director
21.06.2010

Source: Commoindia.com

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