



CS Update

December 19, 2011



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PREVIOUS ISSUES OF CS UPDATE ARE AVAILABLE AT THE FOLLOWING LINK:

<http://www.icsi.edu/Member/CSUpdate/tabid/1635/Default.aspx>

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FORTHCOMING PROGRAMME



11TH ICSI NATIONAL AWARD FOR EXCELLENCE IN CORPORATE GOVERNANCE 2011



Dear Professional Colleagues,

The Institute of Company Secretaries of India is organizing the **11th ICSI National Award for Excellence in Corporate Governance 2011** Presentation Ceremony on Friday, December 23, 2011 at The Grand Ballroom, Taj Krishna, Hyderabad.

Chief Guest	His Excellency Shri E.S.L. Narasimhan <i>Governor Andhra Pradesh</i>
Guest of Honour	Dr. M Veerappa Moily <i>Hon'ble Union Minister for Corporate Affairs</i>
Key Note Speaker	Dr. R A Mashelkar <i>CSIR Bhatnagar Fellow & President, Global Research Alliance, National Chemical Laboratory</i>
Date	December 23, 2011
Time	5.00 p.m.
Venue	The Grand Ballroom, Taj Krishna, Road No.1, Banjara Hills, Hyderabad

The Invitation and Brochure containing details of the programme can be accessed at www.icsi.edu

Invitation : <http://www.icsi.edu/WebModules/LinksOfWeeks/CG2011Invitation.pdf>

Brochure : <http://www.icsi.edu/WebModules/LinksOfWeeks/CG2011Brochure.pdf>

We cordially invite you to attend the Presentation Ceremony and make it a grand success.

Regards

N K Jain
Secretary & CEO



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FROM ICS!



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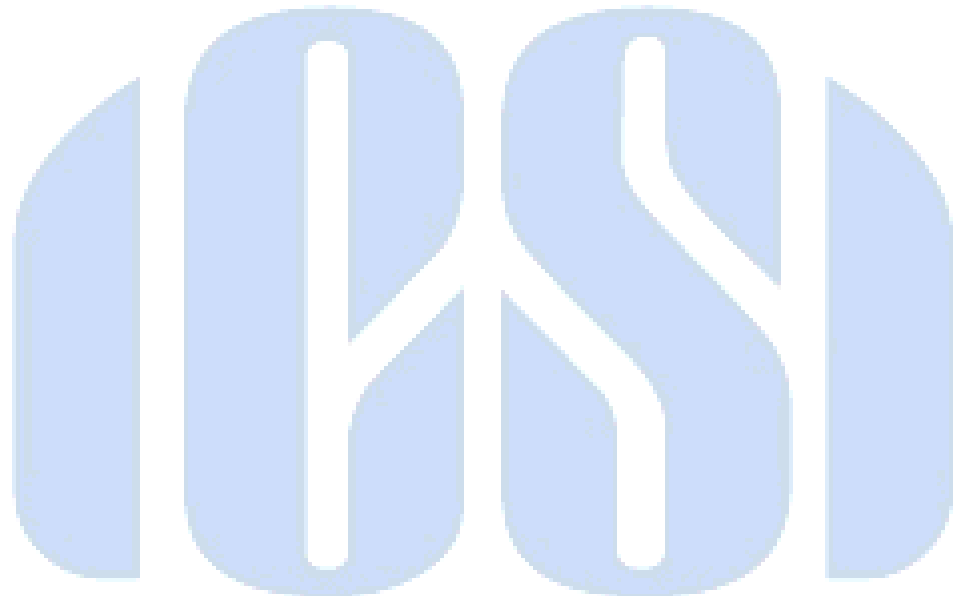
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HIGHLIGHTS OF THE COMPANIES BILL, 2011

Detail can be accessed at:

<http://www.icsi.edu/WebModules/LinksOfWeeks/HIGHLIGHTS-COMPANIES%20BILL2011.pdf>





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REQUEST TO FILE BALANCE SHEET IN XBRL AT THE EARLIEST TO AVOID LATE FEE

Dear Member,

A select class of companies have to file their financial statements for financial year 2010-11 using eXtensible Business Reporting Language (XBRL) vide "Companies (Filing of Documents and Forms in eXtensible Business Reporting Language) Rules, 2011".

Owing to fervent requests from stakeholders, last date of XBRL filings by a company have been extended up to 31.12.2011 or within 60 days from its due date of filing, whichever is later, without any additional fees vide the Ministry's Circular No. 69/2011 dated 30.11.2011. **Please note that companies filing after expiry of this extended timeline would be charged additional fee as per their normal 23AC and 23ACA filings. i.e., late fee for such companies would be calculated with effect from original due date of filing.**

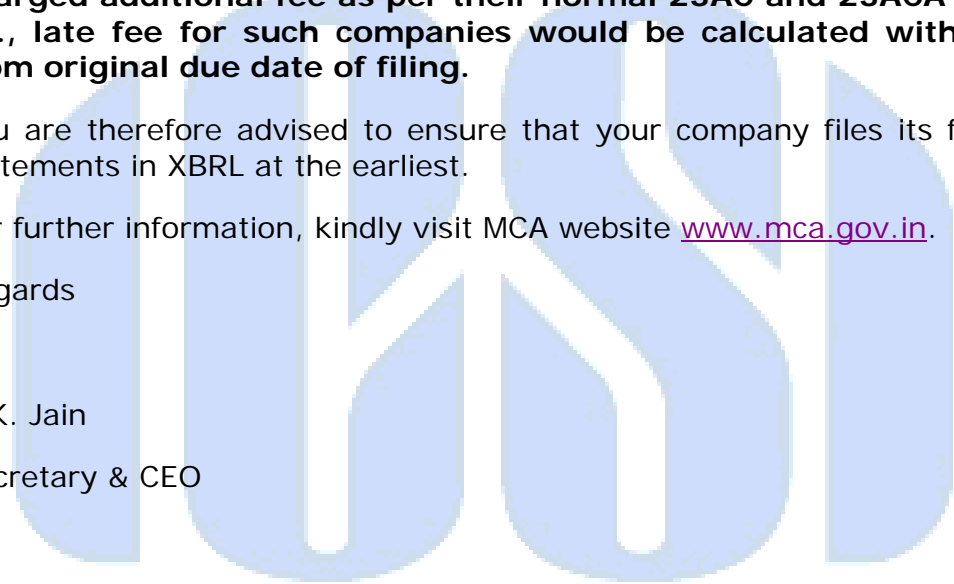
You are therefore advised to ensure that your company files its financial statements in XBRL at the earliest.

For further information, kindly visit MCA website www.mca.gov.in.

Regards

N.K. Jain

Secretary & CEO



FAQs ON PEER REVIEW

Details can be accessed at:

<http://www.icsi.edu/WebModules/LinksOfWeeks/FAQ-PRB.pdf>



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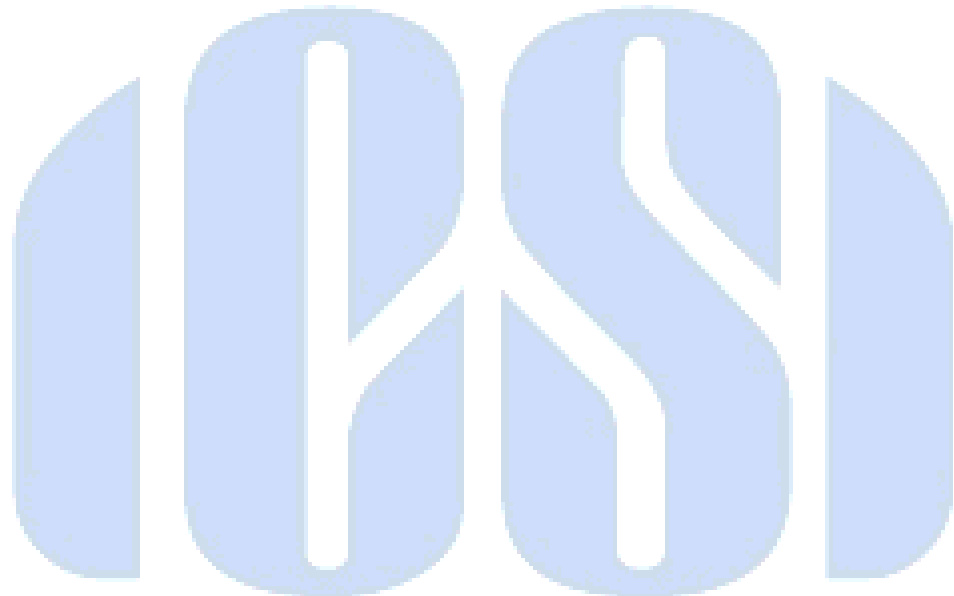
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GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY THE PRACTISING COMPANY SECRETARIES

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
In pursuit of Professional Excellence
"Statutory Body under an Act of Parliament"

NOTIFICATION

New Delhi, the 17th October, 2011

ICSI No. 1 of October, 2011.— The Council of the Institute of Company Secretaries of India pursuant to the Company Secretaries Act, 1980, as amended by the Company Secretaries (Amendment) Act, 2006 has issued the following Guidelines for Peer Review of Attestation Services by the Practising Company Secretaries, namely: -

1. Introduction

The Company Secretaries Act, 1980 (the Act) was enacted to make provision 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. 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 size of companies. Our members in practice are also being recognised for issuing certificates under various laws.

Excellence is the hallmark of success in a competitive environment. The performance can be judged and enhanced to that level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore, decided to introduce Peer Review for Practising Company Secretaries to periodically review the PCS firms and evaluate the quality,

sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.

The Council of the Institute has been constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that "the duties of carrying out the provisions of this Act shall be vested in the Council" and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for Peer Review. These guidelines serve as a mechanism intended to further enhance the quality of professional work of Practising Company Secretaries over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

2. Objectives

2.1 The main objective of Peer Review is to ensure that in carrying out their attestation services and professional assignments, the PCS (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform. The Council has specified in these guidelines for Peer Review, the Technical Standards in relation to which peer review is to be carried out. Peer review does not seek to redefine the scope and authority of the Technical Standards specified by the Council but seeks to enforce them within the parameters prescribed by the Technical Standards.

2.2 Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable technical Standards.

2.3 These guidelines provide a framework of the Peer Review process and the requirements of what is expected of a member during the conduct of a peer review.

2.4 These guidelines may be called the "Guidelines for Peer Review of Attestation Services by Practising Company Secretaries".

2.5 These guidelines shall be applicable w.e.f. 1st October, 2011.

3 . Key Definitions - For the purpose of these guidelines,

3.1 *Attestation Services* - Means services involving the secretarial audit issuing of various certificates, but does not include:

- Management consulting Engagement;
- Representing a client before the Authorities;



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- Testifying as expert witness; and
- Providing expert opinion on points of principle, such as secretarial standards or the applicability of certain laws, on the basis of facts provided by the client,
- The phrase 'Attestation Services' is used in these guidelines interchangeably with secretarial or compliance audit Services, Attestation Functions and secretarial audit functions.

3.2 *Member* - Means a member of the Institute of Company Secretaries of India.

3.3 *Practice Unit* - Means members in practice, whether practicing individually or a firm of Company Secretaries.

3.4 *Peer Review* - Means an examination and review of the systems, procedures and practices to determine whether they have been put in place by the practice unit for ensuring the quality of attestation services as envisaged and implied/ mandated by the Technical Standards and whether these were effective or not during the period under review.

3.5 *Peer Review Board* - Means a Board established by the Council in terms of these Guidelines to conduct peer review. The expression "Peer Review Board" is hereinafter referred to as "Board".

3.6 *Regulator* - Means Government or any regulatory body constituted by the Parliament or State Legislature who is/are empowered to regulate the Acts which include various attestation services which the Council may, from time to time, prescribe to cover as attestation services for the purpose of peer review.

3.7 *Reviewer* - Means any member engaged to carry out peer review of practice unit from the panel of reviewers. –

3.8 *Technical Standards* - Mean and include:

- Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
- Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;
- Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India;
- Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
- Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.

3.9 *Qualified Assistant* - means a person assisting the reviewer for carrying out peer review, who is a member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of clause 15.1 of the Guidelines.



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3.10 Words and expressions used and not defined in these guidelines shall have the meanings assigned to them under the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 framed thereunder.

4. Authority of the Guidelines on Peer Review

4.1 The guidelines on Peer Review shall apply to all or any of the following cases :

- (a) Whenever a peer review is mandated
- (b) Whenever a peer review is requested
- (c) Whenever peer review is conducted.

4.2 The Guidelines on Peer Review are issued in relation to conduct of members in attestation services;

- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review: and
- to establish the expected conduct of members during a peer review.

5. Powers of the Council

- To constitute the Board and to fill in the vacancies arising in the Board from time to time.
- To decide upon, from time to time, the Technical Standards the implementation of which fall within the purview of the peer review process.
- To refer such matters to the Board as the Council may deem fit.

6. Peer Review Board

6.1 Establishment and Appointment

- (1) The Board shall be established by the Council.
- (2) The Board shall consist of a maximum of seven members to be appointed by the Council, of whom at least four shall be from amongst the Members of the Council.
- (3) The balance members of the Board shall be drawn from amongst prominent members of high integrity and reputation, including but not limited to former public officials, regulatory authorities etc.
- (4) The Council shall appoint the Chairman and the Vice-Chairman from amongst the Members of the Council.
- (5) At least one-half of Council Members on the Board shall hold Certificate of Practice.
- (6) The tenure of the Peer Review Board shall be co-terminus with the tenure of the Council and the term of a member shall be for such period as may be prescribed by the Council.
- (7) Any vacancy(ies) on the Board shall be filled in by the Council.
- (8) Members of the Disciplinary Committee of the Institute of Company Secretaries of India shall not concurrently serve on the Board.



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6.2 Meetings

- (1) No business shall be transacted at a meeting of the Board unless there are present at least three members, including the Chairman or in his absence, the Vice-Chairman,
- (2) If there is no quorum within half an hour of the time fixed for the meeting, the meeting shall stand adjourned to a date, time and place fixed by the Chairman or in his absence, the Vice-Chairman.
- (3) The Board shall meet not less than four times in a year.

6.3 Reporting

The Board shall submit proceedings of the meeting of the Board within 30 days from the date of the meeting to the Council.

7. Scope of Peer Review

7.1 The peer review process is directed at the attestation services of a practice unit.

- (1) Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review. Provided that the records of attestation services relating to years prior to the financial year beginning 1.04.2004 shall not be subjected to review.
- (2) The Review shall focus on:
 - (i) Compliance with Technical Standards.
 - (ii) Quality of Reporting.
 - (iii) Office systems and procedures with regard to compliance of attestation services systems and procedures.
 - (iv) Training Programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

8. Powers of the Board

8.1 The duty of carrying out the provisions of these guidelines shall be vested in the Board.

8.2 In particular, and without prejudice to the generality, of the foregoing powers, the duties of the Board shall include:

- (1) To call for information from practice units in such form as it deem fit.
- (2) To maintain a panel of Reviewers.
- (3) To define the terms of appointment of the reviewers.
- (4) To send a Panel of at least three reviewers (from the Board's own panel) to the practice unit and allow the practice unit to choose any one reviewer from the panel so forwarded to it: Provided that in case the practice unit would like to have reviewers from another State/Region (and undertakes to bear the extra costs that would be incurred for TA/DA etc.) and none of the reviewers as identified by the Board for the practice unit are from outside the place of business of the practice unit, then the practice unit may make a special request to the Board to provide names of reviewers from outside the State/Region where the practice unit has his place of business.



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- (5) To examine the aspects of basis of selection of records pertaining to the attestation services in terms of the appropriate Technical Standards.
- (6) To arrange for such training programs for reviewers as may be deemed appropriate;
- (7) To prescribe the system, practice and procedure to be observed in relation to peer reviews; and
- (8) On considering the Report of a reviewer, to do any or all of the following:
 - (a) To issue recommendations to the practice unit;
 - (b) To order a further peer review to be carried out;
- (9) After considering the report of the reviewer and compliance of recommendations by the Practice Unit, wherever deemed appropriate by the Board, to issue Peer Review Certificate.
- (10) To guide the members on best practices on peer review.

8.3 Where deemed appropriate, after the conclusion of a cycle of reviews or at the end of each such period as may be determined, the Board shall have the powers to make a Special Report to the Council on:

- (i) General issues regarding the level of implementation and adherence to Technical Standards amongst practice units.
- (ii) Its own suggestions for further improvement in quality of attestation services.

8.4 The Board may perform any other thing or act as may be incidental to, or which it considers necessary or expedient for the performance of its functions, or exercise of its powers as delegated to it by the Council, including the formation of subcommittees and regional benches of the Board for specific tasks.

9. Compliance with Peer Review Guidelines

9.1 Practice units are required to comply with the provisions of these guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in these regards from time to time, and as intimated to the members

10. Qualifications of the Reviewer

10.1 The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- (a) Be a member;
- (b) Possess at least ten years experience; and
- (c) Be currently in the practice as Company Secretary in Practice.

10.2 The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.

11. Members/ Firms Subject to Review



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11.1 Peer review will be implemented on the basis of random selections from the practice units or at the request of practice unit.

11.2 If company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.

11.3 If Council / Government or any regulatory body requests the Board for conduct of peer review of any Practice Units, the Board shall take due cognizance of such request and in that case the cost of peer review shall be borne by the referred practice unit.

11.4 The Peer Review Board may alter/change/modify the above method of selection with prior approval of the Council.

12. Obligations of the Practice Unit

12.1 Provisions of access to any record or document to a reviewer:

(1) Any person to whom this clause applies and who is reasonably believed by a reviewer to have in his possession or under his control any record or other document, which contains or is likely to contain information relevant to the peer review shall:

(i) Produce to the reviewer or afford him access to any record or document specified by the reviewer or any other record or document which is of a class or description so specified, and which is in his possession or under his control/being in either case a record or other document which the reviewer reasonably believes is or may be relevant to the peer review, within such time as the reviewer may reasonably require:

(ii) If so required by the reviewer, afford and provide to him such explanation or further particulars in respect of anything produced in compliance with a requirement under sub clause (i) above, as the reviewer shall specify; and

(iii) Provide to the reviewer all assistance in connection with peer review which he is expected to provide.

(2) Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part or it in a legible form, with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.

(3) The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.

(4) A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy there from which may be required by the reviewer.



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12.2 For the purpose of this clause a person means a Partner/ Sole Proprietor of the practice unit to which the particular review relates or any person employed by or whose services are engaged by such unit.

13. Periodicity of Peer Review

13.1 The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer reviews for a practice unit can be conducted at shorter intervals.

14. Cost of Peer Review

14.1 The cost of Peer Review for reviewer and his qualified assistant(s) as may be decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer has to conduct second review, the same rate would apply to the second review also. Each of the branch/ office under review would be considered separately.

15. Training and Development

15.1 To ensure that the objective of peer review is attained in letter and spirit, adequate training facilities shall be provided, from time to time, to the Reviewer(s) and other persons who assist the Board as and when and in the manner considered appropriate by the Board. Reviewers shall be expected to be fully familiar with all procedures, prescriptions, guidelines and other decisions as may be issued by the Board from time to time.

16. Review Framework

16.1 Essentially, a peer review entails a review of attestation engagement records and related financial/other statements to ascertain that the practice unit is adhering to Technical Standards. Where a practice unit is not following Technical Standards in certain situations, suggestions and recommendations for improvement may be made, and possibly followed by a further review, in keeping with the primary thrust of peer review.

16.2 The methodological approach involved in peer review can be defined in terms of three stages viz. planning, execution and reporting, which are summarized below;

(i) Planning

- **Intimation** - A practice unit will be intimated in writing about an impending peer review and will be sent a Questionnaire for completion together with a panel of three suggested names of reviewers. The practice unit will have to give its choice of reviewer within a period of 15 days from the day of receipt of the panel sent by the Board.
- **Return of completed Questionnaire** - The practice unit shall have to complete and return the Questionnaire to the reviewer within one month of receipt. The information will be used for the planning of the review. In addition, practice units will be required to enclose a



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complete list of their attestation services clients, and to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services engagements, representative of the practice unit's client portfolio, for review.

(ii) Sample of Attestation services Engagements

- (a) from the complete attestation services client list, an initial sample will be selected by the reviewer. Practice units will be intimated of the selection in writing about two weeks in advance, requesting the relevant records of the selected attestation services clients to be made available for review.
- (b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit's attestation services engagements, he may make further selections.

(iii) Confirmation of visit

In consultation with the practice unit date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that members are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within sixty days of intimation.

- (i) Peer review visits will be conducted at the practice unit's head office or other officially noted/recorded place of office. The complete on-site review of a practice unit may take at least a full day depending upon the size of the practice unit. This is based on the assumption that the practice unit concerned has made all the necessary information and documentation available to the reviewer for his review. However, in any case this on-site review should not extend beyond three working days.

(ii) Initial meeting

An initial meeting will be held between the reviewer and a partner/sole proprietor of the practice unit designated to deal with the review (designated partner). The primary purpose of this meeting is to confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information. The reviewer should have a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting.

(iii) Compliance Review-General Controls

- (a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be reviewed. The following five key controls will be considered as General Controls:



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- Independence
- Maintenance of Professional Skills and standards
- Outside Consultation
- Staff Supervision and Development
- Office Administration

Practice units are expected to address each of the five key control areas.

- (b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the kind of controls that are expected to be maintained, are installed and operated within practice units.
- (c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of the size and culture etc. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.

(iv) Selection of attestation services engagements to be reviewed

- (a) The number of attestation services engagements to be reviewed depends upon:
 - The number of practicing members involved in attestation services engagements in the practice unit;
 - The degree of reliance placed, if any, on general quality controls; and
 - The total number of attestation services engagements undertaken by the practice units for the period under review.
- (b) The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit's attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services client list.

(v) Review of records

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

- (a) Compliance approach-Attestation services Engagements
 - The compliance approach is to assess whether proper control procedures have been established by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards.
 - Practice units should have procedures and documentation sufficient to cover each of the key areas. Members in smaller practices may find some of the documentation too elaborate for most of their clients and so should tailor their attestation services documentation to suit their particular circumstances with justification for doing so provided to the reviewer.
- (b) Substantive approach-Attestation services Engagements



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A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's specific controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory. This approach requires a review of the attestation working papers in order, to establish whether the attestation work has been carried out as per norms of Technical Standards.

16.3 Reporting

(i) Preliminary Report of Reviewer

- At the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.
- The reviewer shall not name any individual in his reports.
- The practice unit shall have 21 days beginning the day after the day the preliminary report is received, by the practice unit from the reviewer to make any submissions or representations, in writing to the reviewer, concerning the preliminary report.

(ii) Interim Report of Reviewer

- (a) If the reviewer is satisfied with the reply received from the practice unit, he shall submit an appropriate Report to the Board. In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall accordingly submit his Interim Report to the Board.
- (b) In pursuance of the provisions contained in the above clause or on receipt of a request from the practice unit, the Board may instruct the reviewer to - again carry out the review after six months to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.
- (c) On receiving a report from a reviewer in terms of these, the Board, having regard to the Report and any submissions or representations attached to it, may:
 - make recommendations to the practice unit concerned regarding the application by it of Technical Standards;
 - if it is of the opinion that
 - (1) In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;
 - (2) In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;Then;
 - (3) Issue instructions to the reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further peer review as regards the practice unit to which the report relates; and
 - (4) Specify in the instruction, the matters as regards which the review is to be carried out;

(d) The Board will make recommendations to the practice unit where:

Based on the report of the reviewer, it appears that the practice unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and

Based on the report of the reviewer, it appears that the practice unit has satisfied the major key control objectives but some weaknesses exist in others. The practice unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

(e) A follow up review will be required where the practice unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the practice unit. In such cases the Board will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

(f) In case the reviewer is not satisfied even at the subsequent review, he shall submit his Report to the Board incorporating his reasons for dissatisfaction.

(iii) final Report of Reviewer

(a) The reviewer will prepare a final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed practice unit. The model forms of such final Reports shall be communicated to the reviewer by the Board.

(b) The Board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the Board may issue recommendations, if considered appropriate, to the practice unit and/or instruct the Reviewer to perform any follow-up action. The Board may, if deemed fit, then issue Peer Review Certificate to the practice unit.

(iv) The reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him or by a partner or an employee of his firm.

17. Referral of Disputes and Appeal

17.1 Where a dispute arises over the powers of reviewers or the process or conclusions reached after the review or to any other matter related to the review, the practice unit, the reviewer or both may refer the dispute, in writing, to the Board. Such referral shall have to be made within two



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months in such manner as may be prescribed by the Board in these regards.

17.2 Where a dispute is referred, after considering any submissions or representations (which shall be made in writing) made by the relevant practice unit and/or the relevant reviewer, the Board-

- Shall decide the dispute within six months and communicate such decision to each of the parties to the dispute;
- May issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them;
- Shall convey its decision in these regards to the appellant within 15 days from the date of the decision, so as to provide the appellant sufficient time to respond.

17.3 Where a practice unit is dissatisfied with the decision of the Board, it may refer the matter to the Council within two months in such manner as may be prescribed.

18. Immunity

18.1 A practice unit, which makes available records or documents to a reviewer, shall not incur any liability under the Code of Conduct under the Company Secretaries Act, 1980 and the Regulations framed thereunder, by reason of compliance with these Guidelines on Peer Review .

18.2 The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

18.3 The members of the Peer Review Board shall not incur any liability by virtue of their having discharged the responsibilities as given in these Guidelines and/or as may in future be specified by the Council, other than the liability arising out of their own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

19. Confidentiality

19.1 Strict confidentiality provisions shall apply to all those involved in the peer review process, namely, reviewers, members of the Board, the Council, or any person who assists any of these parties.

19.2 Those persons subject to the secrecy provision:

(1) Shall at all times after his/ their appointment preserve and aid-in preserving secrecy with regard to any matter coming to his/ their knowledge in the performance or in assisting in the performance of any function, directly or indirectly related to the process and conduct of peer review.

(2) Shall not at any time communicate any such matter to any other person; and

(3) Shall not at any time permit any other person to have any access to any record, document or any other material if any form which is in his/their possession or under his/their control by virtue of his/their being or having been so appointed or his/their having performed or having assisted any other person in the performance of such a function.



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19.3 Non-compliance with the secrecy provisions in the above clause shall amount to professional misconduct as defined under Section 22 of the Company Secretaries Act, 1980.

19.4 A statement of confidentiality (appended as Annexure 'A') shall be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers/ the members of the Board and others who assist them.

20. Procedural Departures

20.1 Where the persons who are responsible for the conduct of peer review (reviewers, the members of the Board and others who assist them) have not followed the prescribed procedures, they shall have to justify significant departures and such justification shall have to be mandatorily made known to the Council in the periodic Reports of the Board to the Council.

Annexure 'A'

Statement of Confidentiality

[In accordance with the Guidelines on Peer Reviews this statement of confidentiality is to be filled in by the persons who are responsible for the conduct of peer review i.e. reviewers, members of the Board and others who assist them, individually. The Reviewer shall be responsible for taking this undertaking from all those persons who assist him or are likely to assist him in conducting peer reviews, and shall send the same to the Board. This statement of Confidentiality should be renewed every year.]

To
The Chairman,
Peer Review Board,
The Institute of Company Secretaries of India

Sir,

I hereby declare that my attention has been drawn to the need for confidentiality in the conduct of peer reviews. I therefore undertake and assure that in so far as any or all of the following relate to me or are brought to my knowledge/attention, in any manner whatsoever, whensoever, I will ensure that on my part

- Working papers shall always be kept securely so that unauthorised access is not gained by anyone.
- The practice unit's attestation services procedures shall not be disclosed to third parties.
- Any information with regard to any matter coming to my knowledge in the performance or in assisting in the performance of any function during the conduct of peer reviews shall not be disclosed to any person.

Access to any record, document or any other material, in any form which is in my possession, or under my control, by virtue of my being or having been so appointed or my having performed or having assisted any other person in the performance of such a function, shall not at any time be permitted to any other person.



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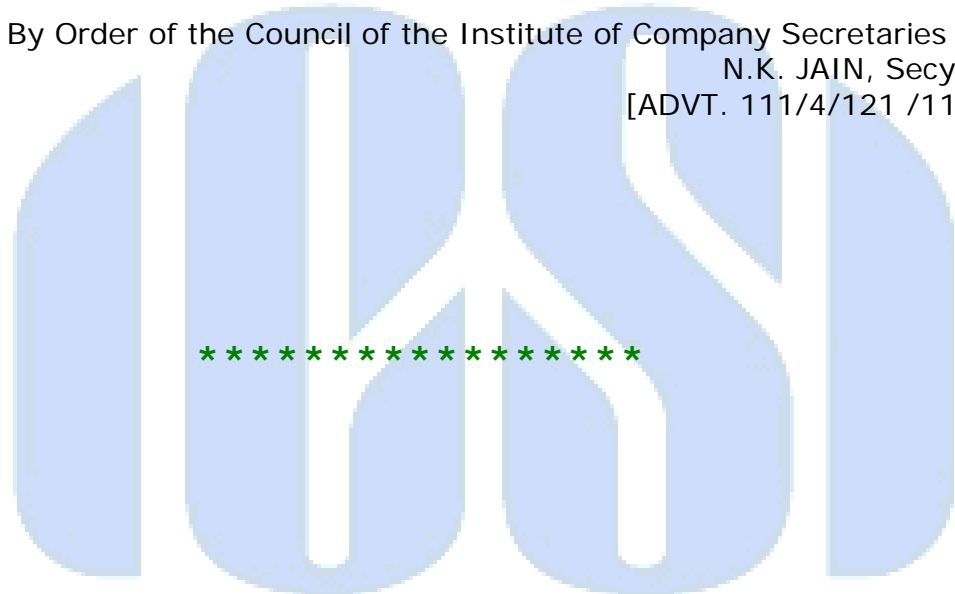
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I understand that any breach of the provisions regarding confidential information contained in the Guidelines on Peer Review will be considered as gross negligence and, subject to investigation, will result in appropriate action.

Signature:
Name:
Designation:
Date:
Place:
Taken on record on (date)
By
Signature:
Name:
Designation:

By Order of the Council of the Institute of Company Secretaries of India
N.K. JAIN, Secy. & CEO
[ADVT. 111/4/121 /11 /Exty.]



MEMORANDUM OF UNDERSTANDING WITH MAICSA

A Memorandum of Understanding was entered into between the MALAYSIAN INSTITUTE OF CHARTERED SECRETARIES AND ADMINISTRATOR (MAICSA) and THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (ICSI) at the 39th National Convention of Company Secretaries at Agra on October 14, 2011.

The important highlights of the MOU are:

- It will help students and members of both institutes to –
 - Attend training programmes organized by other Institutes.
 - Visit offices and work places of members of other Institutes.
 - Attend organized visits to professional places of interest e.g. companies, stock exchanges, securities commissions.
- Both Institutes also agree to –
 - Exchange course materials, case studies, research publications.
 - Undertake joint research projects which are mutually beneficial.

The MOU is available at the following link:

<http://www.icsi.edu/WebModules/LinksOfWeeks/MAICSA.pdf>



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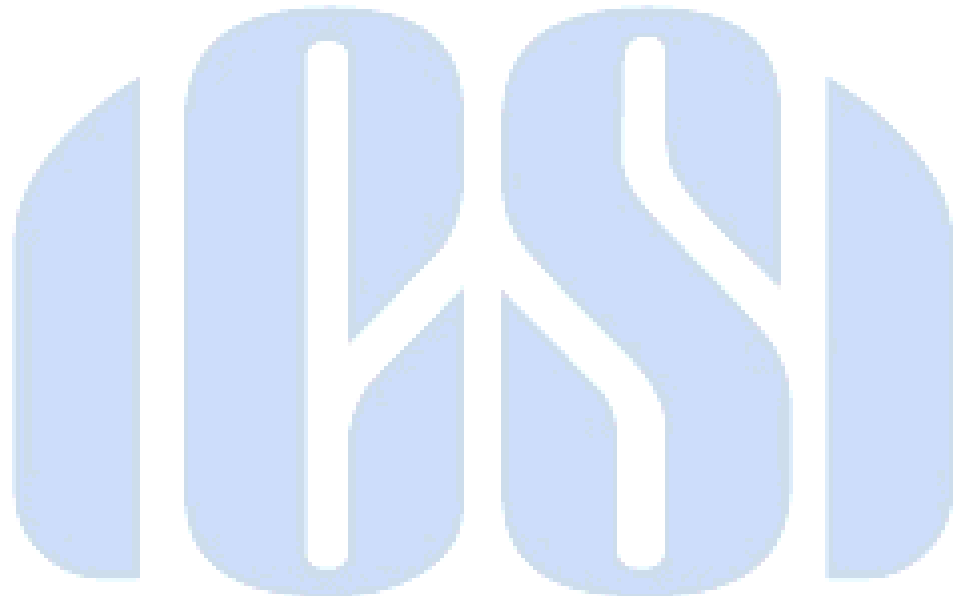
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RE-OPENING THE REGISTRATION PROCESS OF CERTIFIED FACILITATION CENTERS

Details can be accessed at:

<http://www.icsi.edu:8888/cfc/cfc.aspx>



RECORDING OF WEBCAST ON XBRL ARRANGED BY ICSI

Details can be accessed at:

<http://www.streamonweb.com/ICSI/archivals>

<http://68.233.237.91/mca/Default.aspx>



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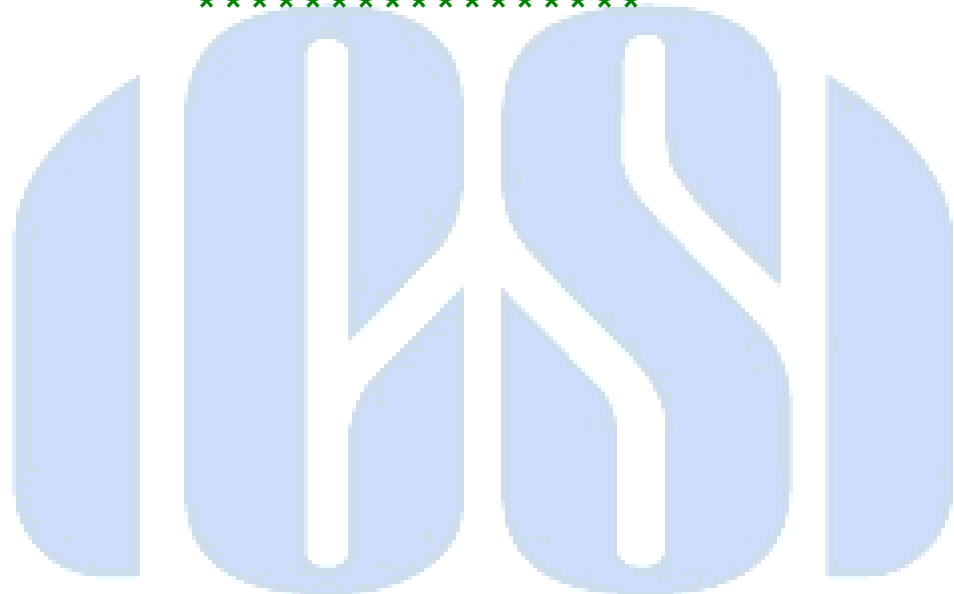
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CG & CSR : WATCH

The Institute has always been in the frontline to promote good corporate governance and it has been the constant endeavour of the Institute to raise awareness among the members and students in Corporate Governance arena. This watch gives an update of the latest happenings in the area of Corporate Governance and Corporate Social Responsibility.

NEW DEVELOPMENTS

1. **The Hong Kong Stock Exchange Publishes Consultation Conclusions on Review of the Corporate Governance Code and Associated Listing Rules**

The Stock Exchange of Hong Kong Limited, a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), on 18th December 2010, published a "Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules" (Consultation Paper) containing proposals to amend the Corporate Governance Code and the Rules pertaining to corporate governance and to simplify language to improve the clarity, certainty and efficacy of the Listing Rules. The consultation period ended on 18 March 2011.

The Exchange published its "Consultation Conclusions on Review of the Corporate Governance Code and Associated Listing Rules" on 28th October, 2011.

The amended Rules which becomes effective between January 1, 2012 and April 1, 2012 stress that directors should ensure that they are fully aware of their duties under the law and the Rules, take an active interest in the issuer's affairs and obtain a general understanding of its business. To provide a sound regulatory framework appropriate for the market and maintain a high standard of corporate governance, a combination of Listing Rules, Code Provisions and Recommended Best Practices has been adopted.

Overall market feedback indicated general support for the proposals, although certain aspects of the proposals drew diverse views.

The details can be accessed at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010124cc.pdf>



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2. Institute of Directors (IoD) (UK) Submission on Executive remuneration discussion paper

The Institute of Directors (UK) has submitted its response (on 25.11.2011) on Discussion paper seeking views on issues relating to executive remuneration.

The discussion paper on Executive remuneration issued by Department for Business Innovation and Skills can be accessed at:

<http://www.bis.gov.uk/assets/biscore/business-law/docs/e/11-1287-executive-remuneration-discussion-paper.pdf>

Key proposals made by the IoD in its response include the following:

- More diversity amongst independent non-executive directors. Boards with members from diverse professional backgrounds are more likely to exhibit "objective scepticism" in respect of remuneration policy than current or former CEOs.
- Introduction of a binding shareholder vote on executive remuneration policy.
- Engagement of remuneration committees, on a voluntary basis, with employee representatives as part of the remuneration setting process.
- Greater transparency regarding the potential conflicts of interest experienced by remuneration consultants.
- A substantial simplification of executive remuneration packages.

Commenting on the IoD's submission, Simon Walker, Director General of the IoD, said:

- "The IoD has noted, with growing concern, the rapid rise in executive remuneration at the largest listed UK companies over the last 10-15 years. We are aware of the difficult challenges faced by remuneration committees in responding to a global market for executive talent. But the current pace of increase in executive pay is unsustainable. The legitimacy of UK business in the eyes of wider society is significantly damaged by pay packages that are not clearly linked to company performance."
- "A higher level of professional diversity amongst independent non-executive directors will assist boards in aligning executive pay with society's expectations. Shareholders should also play a more active oversight role."
- "Remuneration committees should explore ways of engaging with employees on remuneration policy. This will be important in increasing the legitimacy of executive remuneration in the eyes of wider society."

The details can be accessed at:

<http://press.iod.com/2011/11/25/iod-calls-for-action-on-executive-pay/>



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GREEN CORNER

GREEN IDEA



If:

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- You want to save energy.
- You want to be green.

Use CFL/LED light in place of *incandescent bulb*

Interesting fact:

- Switching just one **light bulb** off in every household would reduce carbon dioxide by 90 billion pounds per year.
- Replacing one incandescent bulb with a LED light bulb prevents the release of 300 pounds of carbon dioxide in just one year.

Something good:



Nano Ganesh is a product which allows farmers to use mobile phones to remotely monitor and switch on irrigation pumps used for watering crops in remote locations. Farmers earlier had to walk several kilometres to turn on the irrigation pumps that water their fields. With the electrical supply often erratic, they sometimes found that there was no electricity when they reached the pump. Nano Ganesh allows them to remotely check to see that there is electricity, and to automatically turn the pump on and off, all through a mobile phone.

To Remember:

- December 1 - World AIDS Day
- December 2 - International day for abolition of Slavery
- December 5 - International Volunteer Day for Economic and Social Development
- December 9 - International Anti-Corruption Day
- December 10 - International Human Rights Day

Quote of the Month

"Good corporate governance is about 'intellectual honesty' and not just sticking to rules and regulations, capital flowed towards companies that practiced this type of good governance." –

Mervyn King (Chairman: King Report)



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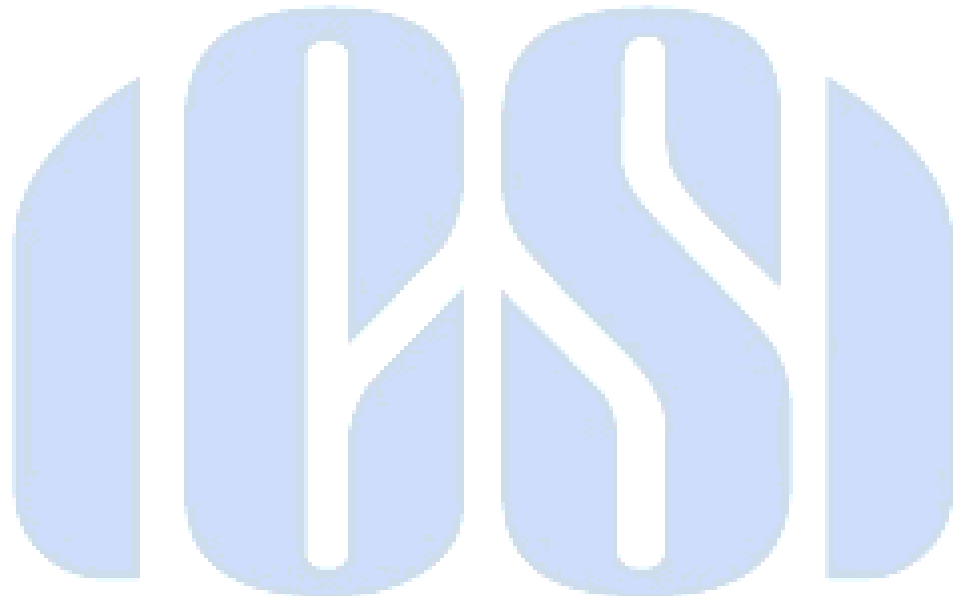


Feedback & Suggestions

Readers may give their feedback and suggestions on this page to Mrs. Alka Kapoor, Joint Director, ICSI (alka.kapoor@icsi.edu)

Disclaimer:

The contents under **CG & CSR: Watch** have been collated from different sources. Readers are advised to cross check from original sources.





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MCA UPDATE





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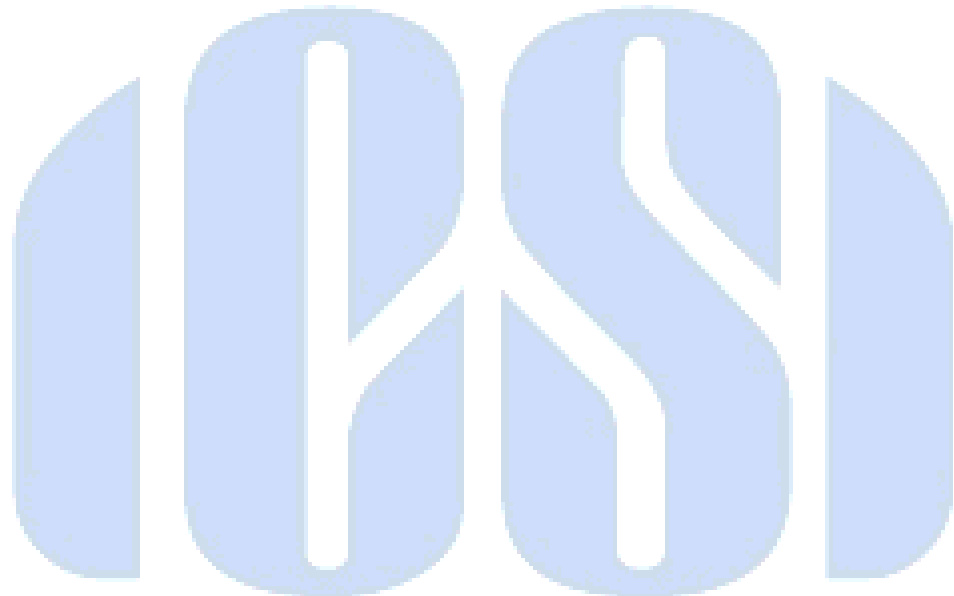
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THE COMPANIES (AMENDMENT) REGULATIONS, 2011

The relevant MCA notification dated 16th December, 2011 can be accessed at the following link:

http://www.mca.gov.in/Ministry/notification/pdf/Companies_Amendment_Regulations2011.pdf



COMPANY LAW SETTLEMENT SCHEME, 2011

General Circular No. 71/2011

**F. No. 2/11/2011-CL V
Government of India
Ministry of Corporate Affairs**

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi,
Dated the 15th Dec, 2011

To

All Regional Director,
All Registrars of Companies.

Subject: Company Law Settlement Scheme, 2011

Sir,

In continuation of the Ministry's General Circulars No. 59/2011 dated 05.08.2011, No. 60/2011 dated 10.08.2011 and No. 65/2011 dated 04.10.2011 on the subject cited above, it is stated that the said scheme has been extended upto 15th January, 2012. It is further stated that this Scheme will not be extended beyond 15.01.2012.

2. All the terms and conditions of the General Circulars No. 59/2011 dated 05.08.2011 and No. 60/2011 dated 10.08.2011 will remain the same.

Yours faithfully,

Sd/-

(U.C. Nahata)

Director (Inspection & Investigation)



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ALLOTMENT OF DIRECTOR'S IDENTIFICATION NUMBER (DIN) UNDER COMPANIES ACT, 1956

General Circular No. 70/2011

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

5th floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi
Dated the 15th December, 2011

To

All Regional Directors
All Registrar of Companies.

Sub: Allotment of Director's Identification Number (DIN) under Companies Act, 1956

Sir,

In continuation of General Circulars No. 32/2011 dated 31.05.2011 and No. 36/2011 dated 04.10.2011 on the subject cited above, I am directed to say that the time for filing form DIN-4 by DIN holders for furnishing PAN and to update PAN details has been extended upto 29.02.2012.

Yours faithfully,

Sd/-
(U.C. Nahata)
Director (Inspection & Investigation)

Copy to:

1. ICAI/ICWAI/ICSI/All Chamber of Commerce with a request to give wide publicity to their members.
2. DIN Cell to issue message through e-mail and SMS to all existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN, to furnish their PAN by filing form DIN-4 by 29.02.2012 to avoid penal action.

Copy for information to:

1. PS to CAM and PS to MOS
2. PPS to Secretary, Additional Secretary, Joint Secretaries



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UNLISTED PUBLIC COMPANIES (PREFERENTIAL ALLOTMENT) AMENDMENT RULE, 2011

The relevant MCA notification dated 14th December, 2011 can be accessed at the following link:

http://www.mca.gov.in/Ministry/notification/pdf/Unlisted_Public_Companies14dec.pdf



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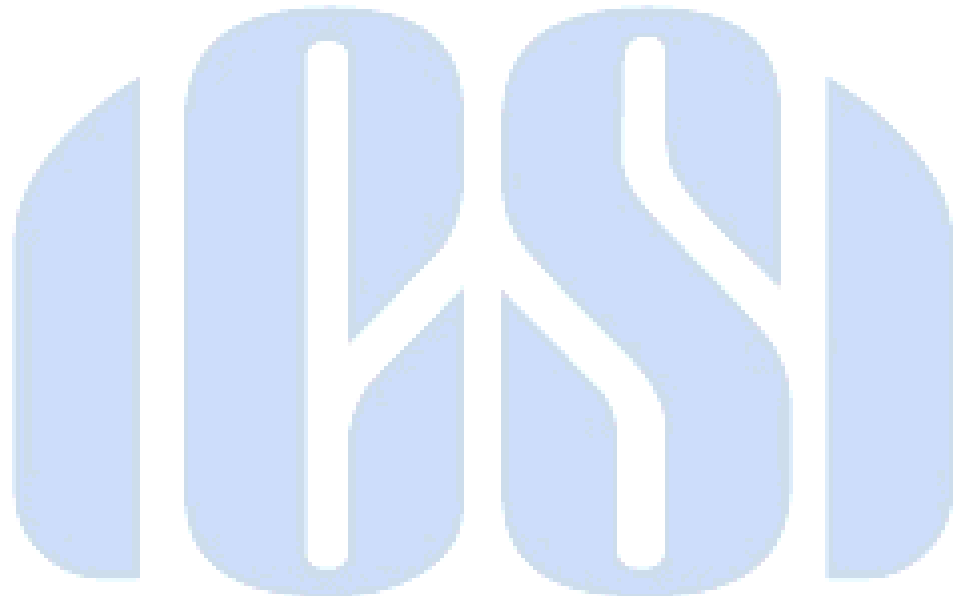
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THE COST ACCOUNTING RECORDS (TELECOMMUNICATION INDUSTRY) RULES, 2011

The relevant MCA notification dated 7th December, 2011 can be accessed at the following link:

http://www.mca.gov.in/Ministry/notification/pdf/TELECOM_CARR_869E.pdf



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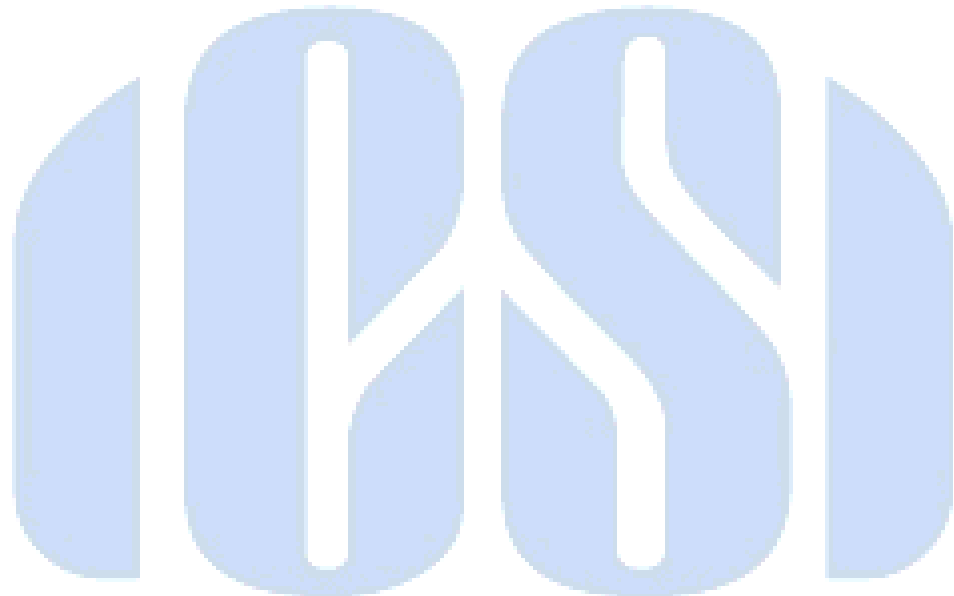
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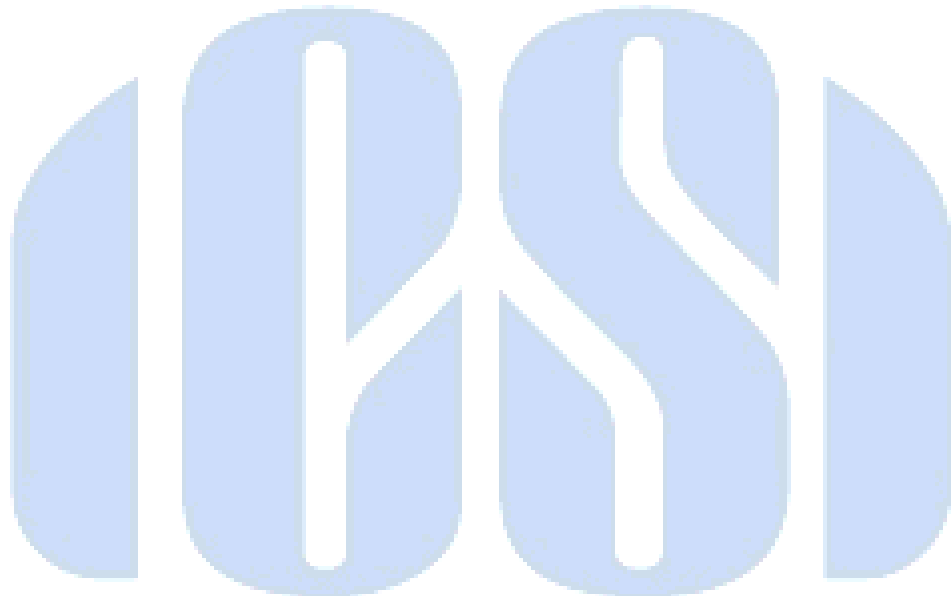




THE COST ACCOUNTING RECORDS (SUGAR INDUSTRY) RULES, 2011

The relevant MCA notification dated 7th December, 2011 can be accessed at the following link:

[http://www.mca.gov.in/Ministry/notification/pdf/SUGAR_CARR_872 E.pdf](http://www.mca.gov.in/Ministry/notification/pdf/SUGAR_CARR_872_E.pdf)



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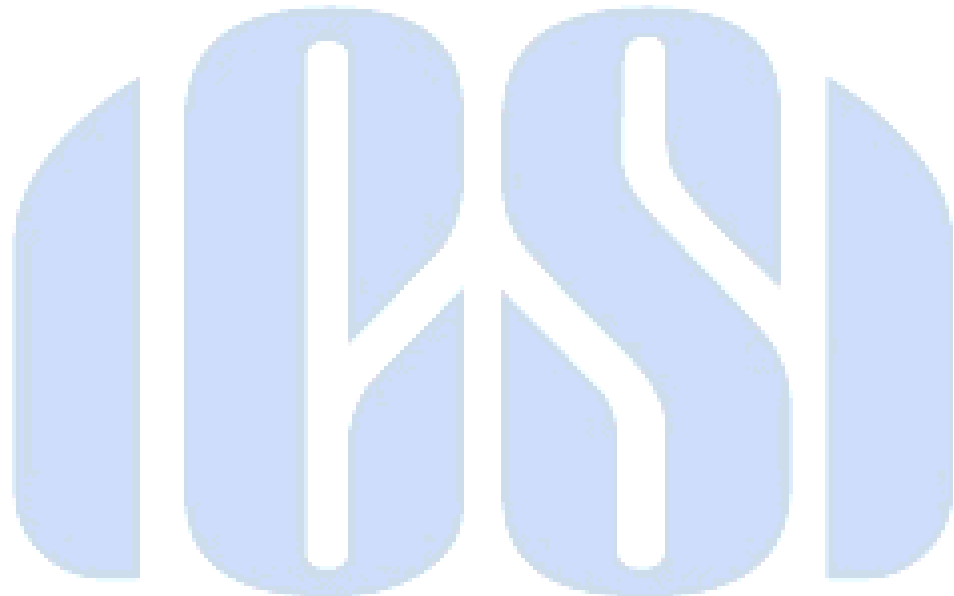
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THE COST ACCOUNTING RECORDS (PHARMACEUTICAL INDUSTRY) RULES, 2011

The relevant MCA notification dated 7th December, 2011 can be accessed at the following link:

http://www.mca.gov.in/Ministry/notification/pdf/PHARMA_CARR_87_4E.pdf



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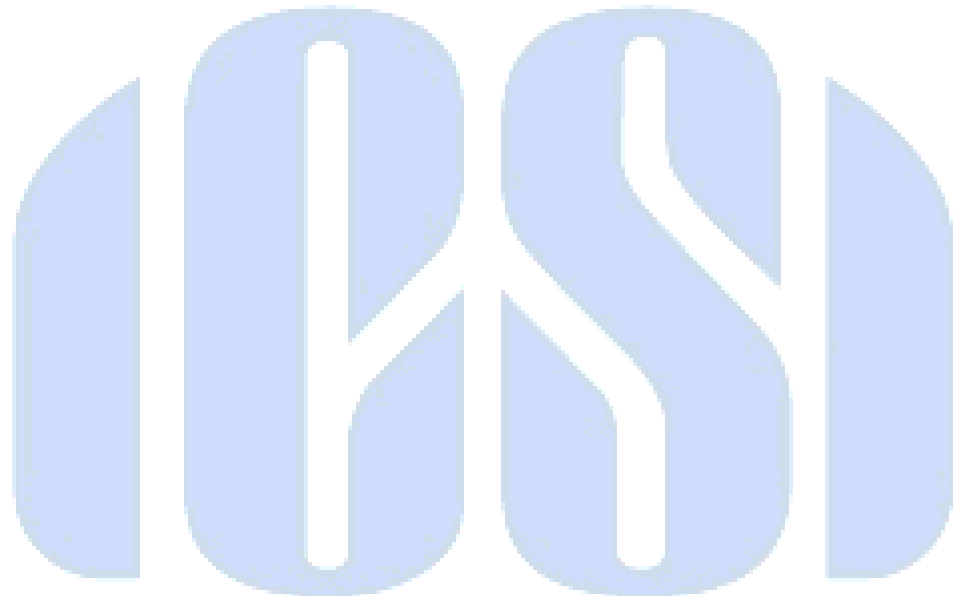
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THE COST ACCOUNTING RECORDS (PETROLEUM INDUSTRY) RULES, 2011

The relevant MCA notification dated 7th December, 2011 can be accessed at the following link:

http://www.mca.gov.in/Ministry/notification/pdf/PETROLEUM_CARR_870E.pdf



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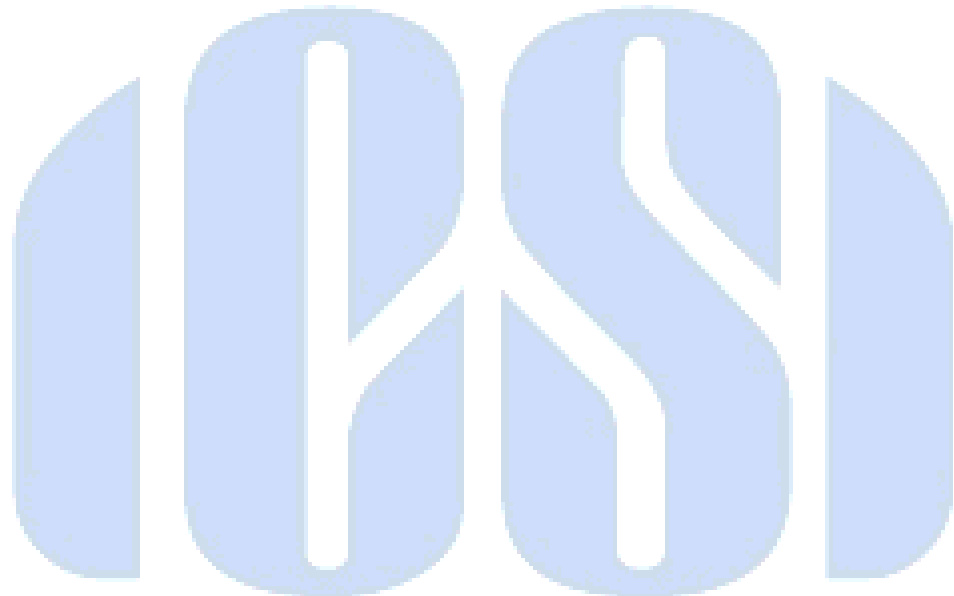
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THE COST ACCOUNTING RECORDS (FERTILIZER INDUSTRY) RULES, 2011

The relevant MCA notification dated 7th December, 2011 can be accessed at the following link:

[http://www.mca.gov.in/Ministry/notification/pdf/Fertilizer_CARR_873 E.pdf](http://www.mca.gov.in/Ministry/notification/pdf/Fertilizer_CARR_873_E.pdf)





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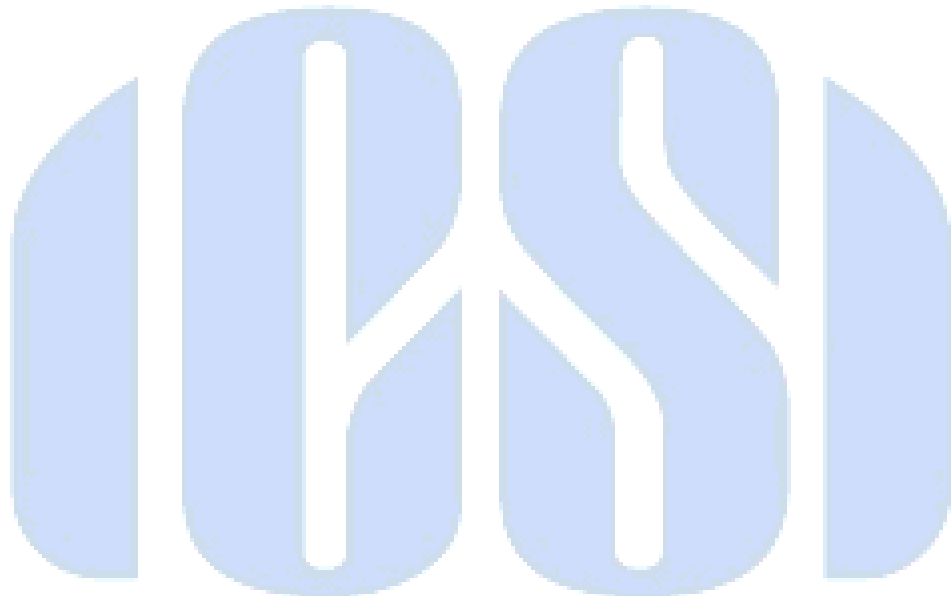
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THE COST ACCOUNTING RECORDS (ELECTRICITY INDUSTRY) RULES, 2011

The relevant MCA notification dated 7th December, 2011 can be accessed at the following link:

http://www.mca.gov.in/Ministry/notification/pdf/ELECTRICITY_CAR_R_871E.pdf



LAST DATE OF FILING OF BALANCE SHEET AND PROFIT & LOSS ACCOUNT IN XBRL MODE EXTENDED



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General Circular No: 69/2011

No. HQ/MCA/DigitisedBS/AR/2009*

Government of India

Ministry of Corporate Affairs

5th Floor, "A" Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi – 110001

Dated 30.11.2011

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

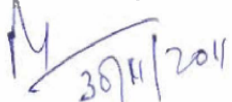
Sub: Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode.

Sir,

In partial modification of Para 1 of the Ministry's Circular no. 57/2011 dated 28.07.2011, the last date for filing financial statements in XBRL mode without any additional fee due to delay by those Phase-I class of companies (excluding exempted class) whose Balance Sheet date for FY 2010-11 is on or after 31.03.2011, has been extended up to 31.12.2011 or within 60 days of their due date of filing, whichever is later.

2. This issue with the approval of the Competent Authority.

Yours faithfully,


30/11/2011
(U.C.Nahta)

Director (Inspection & Investigation)

MINISTRY OF CORPORATE AFFAIRS

REQUEST TO FILE ANNUAL RETURN AND THE BALANCE SHEET AT THE EARLIEST TO AVOID LAST MINUTE RUSH

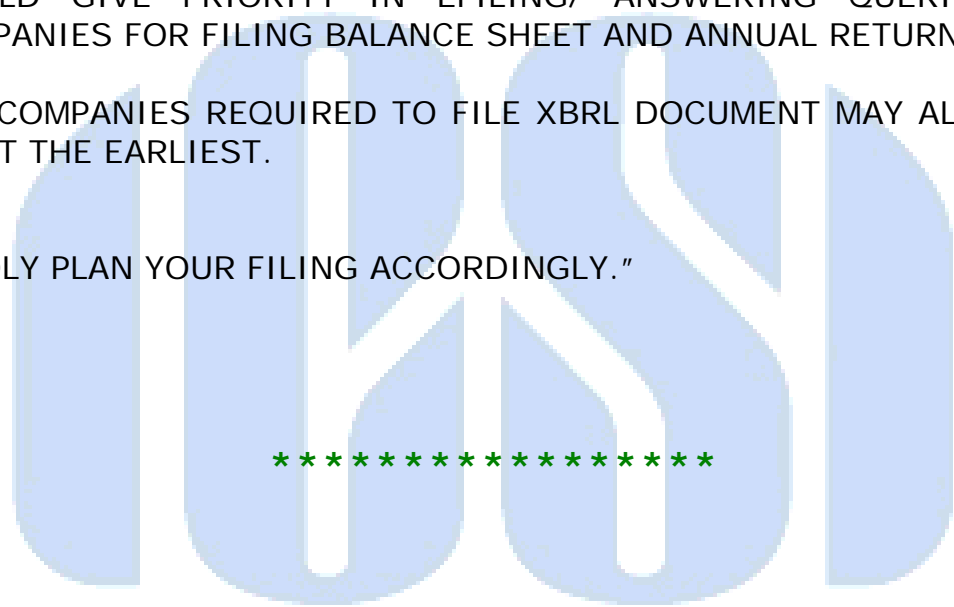
"DEAR CORPORATES / MEMBERS,

TO AVOID LAST MINUTE RUSH AND SYSTEM CONGESTION IN MCA21 TOWARDS END OF DECEMBER 2011, KINDLY EXPEDITE FILING OF ANNUAL RETURN AND BALANCE SHEET WITHOUT WAITING FOR THE LAST DAYS OF THE MONTH.

DURING THIS PERIOD, ROC FACILITATION CENTRES/ HELP DESKS WOULD GIVE PRIORITY IN EFILING/ ANSWERING QUERIES OF COMPANIES FOR FILING BALANCE SHEET AND ANNUAL RETURN.

THE COMPANIES REQUIRED TO FILE XBRL DOCUMENT MAY ALSO DO SO AT THE EARLIEST.

KINDLY PLAN YOUR FILING ACCORDINGLY."



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SEBI UPDATE



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(DEBENTURE TRUSTEES) (SECOND AMENDMENT) REGULATIONS, 2011

THE GAZETTE OF INDIA

EXTRAORDINARY

PART -III - SECTION 4

PUBLISHED BY AUTHORITY

NEW DELHI, DECEMBER 14, 2011

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 14th December, 2011

SECURITIES AND EXCHANGE BOARD OF INDIA

(DEBENTURE TRUSTEES) (SECOND AMENDMENT) REGULATIONS, 2011

No. LAD-NRO/GN/2011-12/30/37715 - In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to amend the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, namely:-

1. These Regulations may be called the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2011.
2. They shall come into force on the date of their publication in the Official Gazette.
3. Regulation 7A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 shall be substituted with the following, namely: -

“Capital Adequacy Requirement.

7A. The capital adequacy requirement referred to in clause (g) of regulation 6 shall not be less than the networth of two crore rupees:

Provided that a debenture trustee, who was granted a certificate of initial or permanent registration, as the case may be, under these regulations prior to the commencement of the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment)



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Regulations, 2011, shall raise its networth to the said minimum within a period of two years from such commencement.”

U. K. SINHA

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes :

1. The Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, were published in the Gazette of India on December 29, 1993, vide No.SEBI/LE/12/93.
2. The Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, were subsequently amended on:
 - (a) November 28, 1995 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 1995 vide S.O. No.939 (E).
 - (b) January 5, 1998 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 1998 vide S.O. No.16(E).
 - (c) September 30, 1999 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 1999 vide S.O. No.795(E).
 - (d) February 17, 2000 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2000 vide S.O. No.135(E).
 - (e) August 8, 2000 by the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2000 vide S.O. No.743(E).
 - (f) March 28, 2000 by the Securities and Exchange Board of India (Appeal to Securities Appellate Tribunal) (Amendment) Regulations, 2000 vide S.O. No.278(E).



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- (g) May 29, 2001 by the Securities and Exchange Board of India (Investment Advice by Intermediaries) (Amendment) Regulations, 2001 vide S.O. No. 476(E).
- (h) September 27, 2002 by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 vide S.O. No.1045(E).
- (i) July 4, 2003 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2003 vide S.O.No. 763(E).
- (j) March 10, 2004 by the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 vide S.O. No. 398(E).
- (k) September 7, 2006 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006 vide S.O No.1451 (E).
- (l) May 26, 2008 by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 vide Notification No. LAD/NRO/GN/2008/11/126538.
- (m) April 13, 2011 by the Securities and Exchange Board of India (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2011 vide Notification No. LAD/ NRO/ GN/ 2011-12/03/12650.
- (n) July 05, 2011 by the Securities And Exchange Board Of India (Debenture Trustees) (Amendment) Regulations, 2011 No. LAD-NRO/GN/2011-12/13/21222

GUIDELINES ON OUTSOURCING OF ACTIVITIES BY INTERMEDIARIES

CIRCULAR

CIR/MIRSD/24/2011

December 15, 2011

All intermediaries registered with SEBI

Merchant Bankers/Registrars to An issue and Share Transfer Agents/Debenture Trustees/Bankers to An Issue/Underwriters/Credit Rating Agencies/Mutual Funds/Portfolio Managers/Venture Capital Funds/Collective Investment Schemes/Custodians

**All the Stock Exchanges (for stock brokers)
NSDL/CDSL (for Depository Participants)**

Dear Sirs,

Sub: Guidelines on Outsourcing of Activities by Intermediaries

1. SEBI Regulations for various intermediaries require that they shall render at all times high standards of service and exercise due diligence and ensure proper care in their operations.
2. It has been observed that often the intermediaries resort to outsourcing with a view to reduce costs, and at times, for strategic reasons.
3. Outsourcing may be defined as the use of one or more than one third party – either within or outside the group - by a registered intermediary to perform the activities associated with services which the intermediary offers.

4. Principles for Outsourcing

The risks associated with outsourcing may be operational risk, reputational risk, legal risk, country risk, strategic risk, exit-strategy risk, counter party risk, concentration and systemic risk. In order to address the concerns arising from the outsourcing of activities by intermediaries based on the principles advocated by the IOSCO and the experience of Indian markets, SEBI had prepared a concept paper on outsourcing of activities related to services offered by intermediaries.

Based on the feedback received on the discussion paper and also discussion held with various intermediaries, stock exchanges and depositories, the principles for outsourcing by intermediaries have been framed (Annexure I). These principles shall be followed by all intermediaries registered with SEBI.

5. Activities that shall not be Outsourced

The intermediaries desirous of outsourcing their activities shall not, however, outsource their core business activities and compliance functions. A few examples of core business activities may be – execution of orders and monitoring of trading activities of clients in case of stock brokers; dematerialisation of securities in case of depository participants; investment



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related activities in case of Mutual Funds and Portfolio Managers. Regarding Know Your Client (KYC) requirements, the intermediaries shall comply with the provisions of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 and Guidelines issued thereunder from time to time.

6. Other Obligations

i. **Reporting To Financial Intelligence Unit (FIU)** - The intermediaries shall be responsible for reporting of any suspicious transactions / reports to FIU or any other competent authority in respect of activities carried out by the third parties.

ii. **Need for Self Assessment of existing Outsourcing Arrangements** – In view of the changing business activities and complexities of various financial products, intermediaries shall conduct a self assessment of their existing outsourcing arrangements within a time bound plan, not later than six months from the date of issuance of this circular and bring them in line with the requirements of the guidelines/principles.

7. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

8. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Circulars".

Yours faithfully,

Prasanta Mahapatra
Deputy General Manager
022-26449313

Email id: prasantam@sebi.gov.in

ANNEXURE I

PRINCIPLES FOR OUTSOURCING FOR INTERMEDIARIES

1. An intermediary seeking to outsource activities shall have in place a comprehensive policy to guide the assessment of whether and how those activities can be appropriately outsourced. The Board / partners (as the case may be) {hereinafter referred to as the "the Board"} of the intermediary shall have the responsibility for the outsourcing policy and related overall responsibility for activities undertaken under that policy.

1.1 The policy shall cover activities or the nature of activities that can be outsourced, the authorities who can approve outsourcing of such activities, and the selection of third party to whom it can be outsourced. For example, an activity shall not be outsourced if it would impair the supervisory authority's right to assess, or its ability to supervise the business of the intermediary. The policy shall be based on an evaluation of risk concentrations, limits on the acceptable overall level of outsourced activities, risks arising from outsourcing multiple activities to the same entity, etc.



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1.2 The Board shall mandate a regular review of outsourcing policy for such activities in the wake of changing business environment. It shall also have overall responsibility for ensuring that all ongoing outsourcing decisions taken by the intermediary and the activities undertaken by the third-party, are in keeping with its outsourcing policy.

2 The intermediary shall establish a comprehensive outsourcing risk management programme to address the outsourced activities and the relationship with the third party.

2.1 An intermediary shall make an assessment of outsourcing risk which depends on several factors, including the scope and materiality of the outsourced activity, etc. The factors that could help in considering materiality in a risk management programme include

- a. The impact of failure of a third party to adequately perform the activity on the financial, reputational and operational performance of the intermediary and on the investors / clients;
- b. Ability of the intermediary to cope up with the work, in case of non performance or failure by a third party by having suitable back-up arrangements;
- c. Regulatory status of the third party, including its fitness and probity status;
- d. Situations involving conflict of interest between the intermediary and the third party and the measures put in place by the intermediary to address such potential conflicts, etc.

2.2 While there shall not be any prohibition on a group entity / associate of the intermediary to act as the third party, systems shall be put in place to have an arm's length distance between the intermediary and the third party in terms of infrastructure, manpower, decision-making, record keeping, etc. for avoidance of potential conflict of interests. Necessary disclosures in this regard shall be made as part of the contractual agreement. It shall be kept in mind that the risk management practices expected to be adopted by an intermediary while outsourcing to a related party or an associate would be identical to those followed while outsourcing to an unrelated party.

2.3 The records relating to all activities outsourced shall be preserved centrally so that the same is readily accessible for review by the Board of the intermediary and / or its senior management, as and when needed. Such records shall be regularly updated and may also form part of the corporate governance review by the management of the intermediary.

2.4 Regular reviews by internal or external auditors of the outsourcing policies, risk management system and requirements of the regulator shall be mandated by the Board wherever felt necessary. The intermediary shall review the financial and operational capabilities of the third party in order to assess its ability to continue to meet its outsourcing obligations.

3 The intermediary shall ensure that outsourcing arrangements neither diminish its ability to fulfill its obligations to customers and regulators, nor impede effective supervision by the regulators.



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3.1 The intermediary shall be fully liable and accountable for the activities that are being outsourced to the same extent as if the service were provided in-house.

3.2 Outsourcing arrangements shall not affect the rights of an investor or client against the intermediary in any manner. The intermediary shall be liable to the investors for the loss incurred by them due to the failure of the third party and also be responsible for redressal of the grievances received from investors arising out of activities rendered by the third party.

3.3 The facilities / premises / data that are involved in carrying out the outsourced activity by the service provider shall be deemed to be those of the registered intermediary. The intermediary itself and Regulator or the persons authorized by it shall have the right to access the same at any point of time.

3.4 Outsourcing arrangements shall not impair the ability of SEBI/SRO or auditors to exercise its regulatory responsibilities such as supervision/inspection of the intermediary.

4 The intermediary shall conduct appropriate due diligence in selecting the third party and in monitoring of its performance.

4.1 It is important that the intermediary exercises due care, skill, and diligence in the selection of the third party to ensure that the third party has the ability and capacity to undertake the provision of the service effectively.

4.2 The due diligence undertaken by an intermediary shall include assessment of:

- third party's resources and capabilities, including financial soundness, to perform the outsourcing work within the timelines fixed;
- compatibility of the practices and systems of the third party with the intermediary's requirements and objectives;
- market feedback of the prospective third party's business reputation and track record of their services rendered in the past;
- level of concentration of the outsourced arrangements with a single third party; and
- the environment of the foreign country where the third party is located.

5 Outsourcing relationships shall be governed by written contracts / agreements / terms and conditions (as deemed appropriate) {hereinafter referred to as "contract"} that clearly describe all material aspects of the outsourcing arrangement, including the rights, responsibilities and expectations of the parties to the contract, client confidentiality issues, termination procedures, etc.

5.1 Outsourcing arrangements shall be governed by a clearly defined and legally binding written contract between the intermediary and each of the third parties, the nature and detail of which shall be appropriate to the materiality of the outsourced activity in relation to the ongoing business of the intermediary.

5.2 Care shall be taken to ensure that the outsourcing contract:

- clearly defines what activities are going to be outsourced, including appropriate service and performance levels;



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- b. provides for mutual rights, obligations and responsibilities of the intermediary and the third party, including indemnity by the parties;
- c. provides for the liability of the third party to the intermediary for unsatisfactory performance/other breach of the contract
- d. provides for the continuous monitoring and assessment by the intermediary of the third party so that any necessary corrective measures can be taken up immediately, i.e., the contract shall enable the intermediary to retain an appropriate level of control over the outsourcing and the right to intervene with appropriate measures to meet legal and regulatory obligations;
- e. includes, where necessary, conditions of sub-contracting by the third-party, i.e. the contract shall enable intermediary to maintain a similar control over the risks when a third party outsources to further third parties as in the original direct outsourcing;
- f. has unambiguous confidentiality clauses to ensure protection of proprietary and customer data during the tenure of the contract and also after the expiry of the contract;
- g. specifies the responsibilities of the third party with respect to the IT security and contingency plans, insurance cover, business continuity and disaster recovery plans, force majeure clause, etc.;
- h. provides for preservation of the documents and data by third party ;
- i. provides for the mechanisms to resolve disputes arising from implementation of the outsourcing contract;
- j. provides for termination of the contract, termination rights, transfer of information and exit strategies;
- k. addresses additional issues arising from country risks and potential obstacles in exercising oversight and management of the arrangements when intermediary outsources its activities to foreign third party. For example, the contract shall include choice-of-law provisions and agreement covenants and jurisdictional covenants that provide for adjudication of disputes between the parties under the laws of a specific jurisdiction;
- l. neither prevents nor impedes the intermediary from meeting its respective regulatory obligations, nor the regulator from exercising its regulatory powers; and
- m. provides for the intermediary and /or the regulator or the persons authorized by it to have the ability to inspect, access all books, records and information relevant to the outsourced activity with the third party.

6 The intermediary and its third parties shall establish and maintain contingency plans, including a plan for disaster recovery and periodic testing of backup facilities.

6.1 Specific contingency plans shall be separately developed for each outsourcing arrangement, as is done in individual business lines.

6.2 An intermediary shall take appropriate steps to assess and address the potential consequence of a business disruption or other problems at the third party level. Notably, it shall consider contingency plans at the third party; co-ordination of contingency plans at both the intermediary and the third party; and contingency plans of the intermediary in the event of non-performance by the third party.



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6.3 To ensure business continuity, robust information technology security is a necessity. A breakdown in the IT capacity may impair the ability of the intermediary to fulfill its obligations to other market participants/clients/regulators and could undermine the privacy interests of its customers, harm the intermediary's reputation, and may ultimately impact on its overall operational risk profile. Intermediaries shall, therefore, seek to ensure that third party maintains appropriate IT security and robust disaster recovery capabilities.

6.4 Periodic tests of the critical security procedures and systems and review of the backup facilities shall be undertaken by the intermediary to confirm the adequacy of the third party's systems.

7 The intermediary shall take appropriate steps to require that third parties protect confidential information of both the intermediary and its customers from intentional or inadvertent disclosure to unauthorised persons.

7.1 An intermediary that engages in outsourcing is expected to take appropriate steps to protect its proprietary and confidential customer information and ensure that it is not misused or misappropriated.

7.2 The intermediary shall prevail upon the third party to ensure that the employees of the third party have limited access to the data handled and only on a "need to know" basis and the third party shall have adequate checks and balances to ensure the same.

7.3 In cases where the third party is providing similar services to multiple entities, the intermediary shall ensure that adequate care is taken by the third party to build safeguards for data security and confidentiality.

8 Potential risks posed where the outsourced activities of multiple intermediaries are concentrated with a limited number of third parties.

In instances, where the third party acts as an outsourcing agent for multiple intermediaries, it is the duty of the third party and the intermediary to ensure that strong safeguards are put in place so that there is no co-mingling of information /documents, records and assets.

REVISED FORMAT OF MONTHLY CUMULATIVE REPORT (MCR) INCORPORATING INVESTMENTS IN INFRASTRUCTURE DEBT FUND

CIRCULAR

Cir/ IMD/ DF/ 21 / 2011
December 13, 2011

All Registered Mutual Funds/ Approved Asset Management Companies (AMCs)

Sir/Madam,

Sub: Revised format of Monthly Cumulative Report (MCR) incorporating investments in Infrastructure Debt Fund

1. Please refer to SEBI circular SEBI/IMD/CIR No. 3/124444/08 dated April 30, 2008 prescribing the format for Monthly Cumulative Report.
2. Since the SEBI(Mutual Funds) Regulations, 1996 have been amended to enable mutual funds to launch Infrastructure Debt Fund scheme/s (IDFs) in terms of Chapter VI-B of the Regulations, the format for MCR is being modified to include IDF schemes as per [Annexure A](#).
3. Mutual Funds shall report data in new MCR format from the month of January, 2012.
4. 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

[Annexure A](#) is available on the following link:

http://www.sebi.gov.in/cms/sebi_data/commondocs/cirimddf21ann_p.pdf



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THE SECURITIES AND EXCHANGE BOARD OF INDIA (KYC REGISTRATION AGENCY) REGULATIONS, 2011

CIRCULAR

MIRSD/Cir-23/2011

December 2, 2011

SEBI Registered Intermediaries –
Stock Brokers through Stock Exchanges
Depository Participants (DPs) through Depositories,
Mutual Funds (MFs)
Portfolio Managers (PMs),
Collective Investment Schemes (CIS)
Venture Capital Funds (VCFs)

Association of Mutual Funds in India (AMFI)

Dear Sirs,

Subject: The Securities and Exchange Board of India (KYC Registration Agency) Regulations, 2011.

1. As you are aware, SEBI simplified the account opening process for investors vide Circular No. CIR/MIRAD/16/2011 dated August 22, 2011. Further, SEBI vide circular MIRSD/SE/Cir-21/2011 dated October 05, 2011 issued guidelines for uniform KYC requirements for investors while opening accounts with any intermediary in the securities market.
2. At present, if a client intends to open accounts with different intermediaries for the purpose of trading / investment in the securities market, he has to undergo the process of Know Your Client (KYC) again and again. Therefore, to avoid duplication of KYC process with every intermediary, a mechanism for centralization of the KYC records in the securities market has been developed.
3. An intermediary shall perform the initial KYC of its clients and upload the details on the system of the KRA. When the client approaches another intermediary, the intermediary can verify and download the client's details from the system of the KRA. As a result, once the client has done KYC with a SEBI registered intermediary, he need not undergo the same process again with another intermediary.
4. Accordingly, SEBI has formulated the KYC Registration Agency (KRA) Regulations, which have been notified vide notification no. LAD-NRO/GN/2011-12/29/36772 dated December 2, 2011 (copy enclosed). The Regulations cover the registration of KRAs, functions and responsibilities of the KRAs and intermediaries, code of conduct, data security, etc.



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5. The Stock Exchanges & Depositories are directed to:

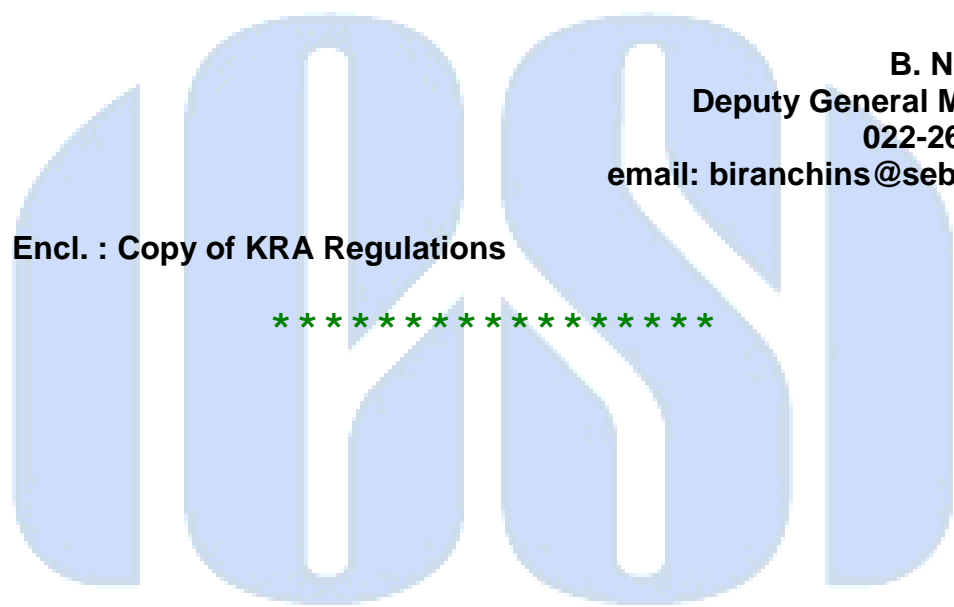
- bring the provisions of this circular to the notice of the Stock Brokers & DPs, respectively, and disseminate the same on their websites;
- make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another;
- monitor the compliance of this circular through half-yearly internal audits and inspections; and
- communicate to SEBI, the status of the implementation of the provisions of this circular through Monthly Development Report of the following month.

6. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

Yours faithfully,

B. N. Sahoo
Deputy General Manager
022-26449250
email: biranchins@sebi.gov.in

Encl. : Copy of KRA Regulations





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TAX LAW UPDATE

SERVICE TAX REFUND TO EXPORTERS THROUGH THE INDIAN CUSTOMS EDI SYSTEM (ICES)

Circular No. 149/18/2011-ST

F.No.354/66/2011-TRU

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs
(Tax Research Unit)

146-F, North Block,
New Delhi, 16th December, 2011

To

Chief Commissioners of Customs (All)
Chief Commissioners of Customs and Central Excise (All)
Chief Commissioners of Central Excise & Service Tax (All)
Director General of Export Promotion
Director General of Service Tax
Commissioners of Customs (All)
Commissioners of Customs and Central Excise (All)
Commissioners of Central Excise and Service Tax (All)
Commissioners of Service Tax (All)

Madam/Sir,

Subject: Service Tax Refund to exporters through the Indian Customs EDI System (ICES) — regarding.

So far Service Tax Refund (STR) was made available to exporters (other than SEZ Units/Developers) on specified services used for export of goods covered in Notification 17/2009-ST dated 07.07.2009 (as amended) subject to certain conditions. In this connection, Honourable Finance Minister, had stated in his Budget Speech that

"There have been considerable difficulties in the sanction of refunds, relating to tax paid on services used for export of goods. I propose to shortly introduce a scheme for the refund of these taxes on the lines of drawback of duties in a far more simplified and expeditious manner".

2. Accordingly, Government has proposed to introduce a simplified scheme for electronic refund of service tax to exporters, on the lines of duty drawback. With the introduction of this new scheme, exporters now have a choice: either they can opt for electronic refund through ICES system, which is based on the 'schedule of rates' or they can opt for refund on the basis of documents, by approaching the Central Excise/Service Tax formations.

3. To obtain benefit under the new electronic STR scheme, which is based on the 'schedule of rates', an exporter: (i) should have a bank account and also a central excise registration or service tax code number and the same should be registered with Customs ICES 1.5 using 'Annexure -A' Form; (ii) should declare his option to avail STR on the electronic shipping bill while presenting the same to the proper officer of Customs.

4. In the 'schedule of rates', to be notified shortly, rates are specified for goods of a class or description. An exporter, who wishes to obtain electronic STR, should express his option by mentioning in the shipping bill, chapter/subheading number at the first two digits or four digit levels specified in the schedule of rates, as applicable to the export goods declared in the shipping bill. This chapter/sub heading number should tally with RITC code mentioned in the Shipping Bill against



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the export goods. Eligible refund amount of service tax paid on the specified services used for export of goods declared in the shipping bill will be calculated electronically by the ICES system, by applying the rate specified in the schedule against the said goods, as a percentage of the FOB value.

5. Exporters who do not like to obtain electronic STR on the basis of 'schedule of rates', but wish to opt for claiming STR on the basis of documents, through the Central Excise/Service Tax field formations should declare chapter/subheading number as 9801 in the electronic Shipping Bill. Minimum STR will be Rupees Fifty for an electronic shipping bill. An exporter who wants to get the chapter/sub heading number amended, for any reason, can get the same carried out through the ICES service centre by filing an amendment request; amendment request can also be filed through ICEGATE using Remote EDI System (RES) software. Exporters can track the status of their refund claim and details of refund amount through ICEGATE Document Tracking and Touch Screen Enquiry.

6. STR amount processed under the ICES will be disbursed through the branch of the authorized bank at each customs location. The STR amount in respect of individual exporters will be credited directly to the bank account of the exporter, in the authorized bank branch at a Custom location or to any core banking enabled banking account of the exporter, in any branch/bank anywhere in the country (through the NEFT/RTGS). For this purpose, the exporters are required to register with Customs, the Indian Financial Service Code (IFSC) of the bank branch in which s/he wishes to receive the STR amount, the core banking enabled account number, bank name and address, using 'Annexure-A'. The procedure for registration of bank account is the same as existing procedure for registration of bank account for receiving drawback amount. Form for registration of bank account, namely, 'Annexure-A' is enclosed to this Circular, for the convenience of the exporters.

7. Duly filled in 'Annexure-A' form enclosed in this Circular (along with self-certified photocopy of central excise registration or service tax code number), should be submitted to the Designated Superintendent in the Customs Houses/Customs formations, as soon as possible, to get benefit of the electronic refund scheme. (Merchant Exporters, who require a service tax code, can use Form A-2 provided in the Notification 17/2009-ST and obtain the same from jurisdictional central excise or service tax by following the procedure prescribed in the notification). In respect of exporters who already have their bank accounts registered for receiving drawback amount, no new/separate account will be necessary for receiving service tax refund; but they should register their central excise registration or service tax code number with Customs ICES using Annexure-A Form, if they wish to opt for electronic STR. An exporter availing drawback scheme cannot have separate bank accounts for drawback and service tax refund.

8. A new head of accounts under Major Head "0044- Service Tax" has been opened, namely 00441082 for booking of consolidated electronic refunds.

9. Chief Commissioners/ Commissioners are requested to cause wide publicity to the new electronic STR scheme among exporters. Necessary steps may be taken to disseminate information regarding the salient features of the new electronic STR scheme to the Industry and Trade Bodies/ Chambers / Exporters / CHA Associations. In major Custom Houses, special arrangements may be made to receive the duly filled in 'Annexure-A' forms from the exporters. Systems Managers may make necessary arrangements to verify the Annexure -A forms and upload the details in the ICES. This circular is also being posted on the CBEC website, www.cbec.gov.in and www.icegate.gov.in for the information of all stakeholders.

10. Trade Notices/Facility Circulars may be issued by the service tax/central excise and service tax/customs commissionerates. Hindi version will follow.

Enclosed: Annexure - A Form

(J. M. Kennedy)
Director (TRU)

Tel/Fax: 011-23092634

Email: jm.kennedy@nic.in

Annexure A

PART- A
BANK ACCOUNT REGISTRATION FOR E-STR

I.E.C. Number :
IFS Code :
Bank Account Number :
Bank Name & Address :

Certificate from the bank

Certified that the above particulars are correct.

Signature
(Bank Branch Manager along with official seal)

PART-B
Central Excise Registration/Service Tax Code Number

In case, Service Tax Refund (STR) is to be claimed electronically through ICES 1.5, on the basis of 'schedule of rates', please provide following details:

Central Excise Registration
Number:.....

OR

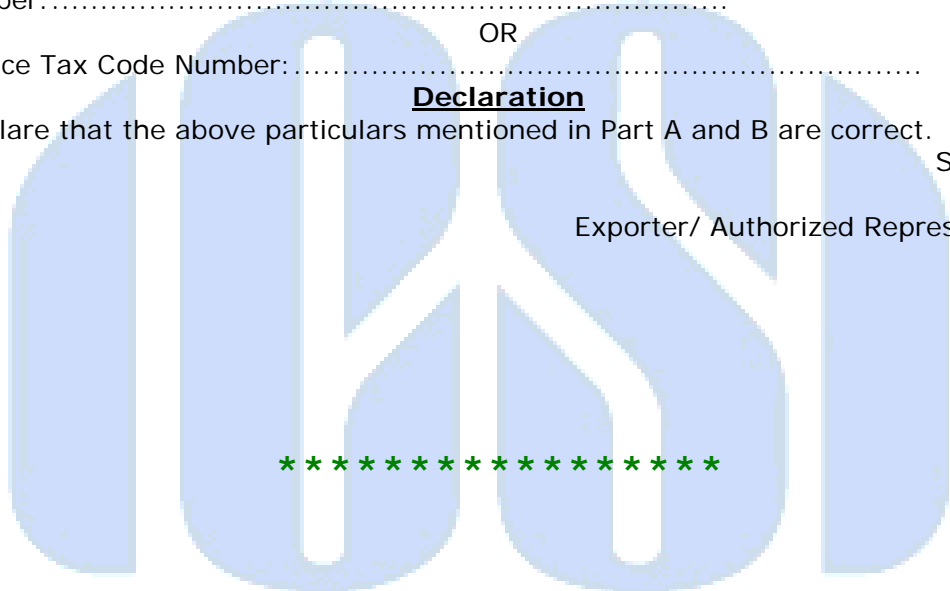
Service Tax Code Number:.....

Declaration

I declare that the above particulars mentioned in Part A and B are correct.

Signature

Exporter/ Authorized Representative



Put in your innovative idea to develop something useful out of the waste.



Stop the use of poly bags for any purpose

Let's Carpool!



Pledge to save fuel, save money, save energy

