



**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**

**December 24, 2010**

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# FROM ICS!

- **ELECTION TO THE 11<sup>th</sup> COUNCIL OF THE ICSI HELD ON  
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# MCA UPDATE

**ADDITIONAL FEES REVISED w.e.f 5<sup>TH</sup> DECEMBER, 2010.**

**Dear Corporates,**

It has been decided to revise the additional fees payable as per Section 611(2) of the Companies Act, 1956 (except for Form 5) as per below details with effect from 5th December 2010 :-

<b>Period of Delay</b>	<b>Fixed rate of additional fee</b>
Upto 30 days	Two times of normal filing fee
More than 30 days and upto 60 days	Four times of normal filing fee
More than 60 days and upto 90 days	Six times of normal filing fee
More than 90 days	Nine times of normal filing fee

In order to avoid payment of additional fees, please file within stipulated time.

**Source: [www.mca.gov.in](http://www.mca.gov.in)**

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## **CIRCULAR ON EASY EXIT SCHEME, 2011**

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

5<sup>th</sup> Floor, 'A' Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi

Dated the 3<sup>rd</sup> December, 2010

To  
All Regional Director,  
All Registrar of Companies.

**Subject: Easy Exit Scheme, 2011**

Sir,

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

2. In order to give an opportunity to the defunct companies, for getting their names strike off from the Register of Companies, the Ministry had launched a Scheme namely, "Easy Exit Scheme, 2010" under Section 560 of the Companies Act, 1956 during May-Aug, 2010. A large number of companies availed this scheme. However, on huge demands from corporate sector, the Ministry has decided to re-launch the Scheme as, "Easy Exit Scheme, 2011" under Section 560 of the Companies Act, 1956. The details of the Scheme are as under: -

(i) The Scheme shall come into force on the 1<sup>st</sup> January, 2011 and shall remain in force up to 31<sup>st</sup> January, 2011.

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

- (a) "company" means a company registered under the Companies Act, 1956;
- (b) "Collective Investment Management Company" means the company as defined in clause (h) of sub-regulation of 2 of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999;

- (c) "defunct company" means a company registered under the Companies Act, 1956 which is not carrying over any business activity or operation on or after the 1<sup>st</sup> April, 2008 and includes a company which has not raised its paid up capital as provided in sub sections (3) and (4) of section 3 of the Companies Act, 1956;
- (d) "Non-Banking Financial Company" means a company as defined under clause (f) of section 45-I of the Reserve Bank of India Act, 1934;
- (e) **"Scheme" means the "Easy Exit Scheme, 2011" (EES, 2011), being specified through this Circular;**
- (f) "vanishing company" means a company, registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.

**(iii) Applicability: -**

- (a) Any "defunct company" which has active status on Ministry of Corporate Affairs portal may apply under EES, 2011 in accordance with the provisions of this Scheme for getting its name strike off from the Register of Companies;
- (b) Any defunct company which is a Government Company shall submit 'No Objection Certificate' issued by the concerned Administrative Ministry or Department or State Government along with the application under this Scheme;
- (c) The purpose of the Scheme is to allow eligible companies to avail of this opportunity to exit from the Register of Companies after fulfilling the requirements laid down herewith and the decision of the Registrar of Companies in respect of striking off the name of company shall be final.

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

- (a) listed companies;
- (b) companies that have been de-listed,
- (c) companies registered under section 25 of the Companies Act, 1956;
- (d) vanishing companies;

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

**(v) Procedure for making an application:-**

(a) Any defunct company desirous of getting its name strike off the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form EES, 2011, annexed;

(b) The Form EES, 2011, should be filed electronically on the Ministry of Corporate Affairs portal namely [www.mca.gov.in](http://www.mca.gov.in) accompanied by filing fee of Rs. 3,000/-;

(c) In case, the application in Form EES, 2011, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;

(d) In all cases, the Form EES, 2011, shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice;

(e) The company shall disclose pending litigations if any, involving the company while applying under this Scheme;



(f) The Form shall be accompanied by an affidavit annexed at Annexure- A of Form EES, 2011, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations and has not carried on any business after the 1<sup>st</sup> April, 2008, as the case may be;

(g) The Form EES, 2011 shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B of Form EES, 2011, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;

(h) The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form EES, 2011, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.

(i) In the case of 100% Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form EES, 2011 and in Annexure A, B and C in place of name and other details of the directors and also to sign the said documents before filing.

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

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

(b) The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under EES, 2011, on daily basis, on the MCA portal [www.mca.gov.in](http://www.mca.gov.in),

giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar;

(c) In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of Companies, at the end of every week, after the Scheme commences, shall send intimation of such companies availing EES, 2011, during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing EES, 2011, during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;

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

Yours faithfully,

(Monika Gupta)  
Assistant Director

**NOTE:** To view Form EES, 2011 and the proforma of various attachments required to be send along with it, kindly visit the website of Ministry of Corporate Affairs i.e. [www.mca.gov.in](http://www.mca.gov.in)

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# SEBI UPDATE

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**Views solicited on Report of the Committee on 'Review of Ownership and Governance of Market Infrastructure Institutions'**

SEBI has placed a Report of the Committee on 'Review of ownership and governance of Market Infrastructure Institutions' on its website for public comments.

The report *inter-alia* covers the following:

1. Ownership norms: Structure of Market Infrastructure Institutions (MIIs), ownership norms for the MIIs, ownership and control of an MII in another class of MII, foreign participation etc.
2. Governance norms: The board composition for MIIs and disclosures to be made by board members.
3. Measures for conflicts resolution: Appointment and compensation for senior management of the MII including MD/CEO, measures to ensure autonomy of regulatory departments and requirements for a compliance officer etc.
4. Other issues including Listing of MIIs, net worth requirements, distribution of profits of MIIs, related businesses that can be entered into by MIIs etc.

We attach a copy of the Report and would appreciate to receive the views/suggestions on the same on [sonia.baijal@icsi.edu](mailto:sonia.baijal@icsi.edu) by December 24, 2010 for sending to SEBI.

**Link:** <http://www.sebi.gov.in/commreport/ownershipreport.pdf>

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# RBI UPDATE

**USE OF INTERNATIONAL DEBIT CARDS/ STORE VALUE  
CARDS/CHARGE CARDS/SMART CARDS BY RESIDENT  
INDIANS WHILE ON A VISIT OUTSIDE INDIA**

**RBI/2010-11/323****A.P. (DIR Series) Circular No. 29****December 22, 2010**

To

All Banks authorised to deal in Foreign Exchange

Madam / Sir,

**Use of International Debit Cards/ Store Value Cards/Charge Cards/Smart  
Cards by resident Indians while on a visit outside India**

Attention of all the banks authorised to deal in foreign exchange is invited to paragraph 4 of the [A.P.\(DIR Series\) Circular No. 46 dated June 14, 2005](#) in terms of which they are required to submit a statement as on December 31, each year in case the aggregate forex utilization by the International Debit Card holders exceeds USD 100,000 in a calendar year.

2. It has been decided to discontinue the submission of the statement mentioned above to the Reserve Bank. Accordingly, all the banks authorised to deal in foreign exchange are advised to discontinue the submission of the aforementioned statement from the calendar year 2010 onwards.

3. All other instructions of A.P. (DIR Series) Circular No. 46 dated June 14, 2005 shall continue to remain the same.

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

Yours faithfully,

**(Salim Gangadharan)**  
**Chief General Manager-in-Charge**

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Date : 23 Dec 2010

## **RBI RELEASES GIST OF COMMENTS ON THE DISCUSSION PAPER ON ENTRY OF NEW BANKS IN THE PRIVATE SECTOR**

The Reserve Bank of India released on its website today, the gist of the comments on the Discussion Paper on "Entry of New Banks in the Private Sector". The range of comments received has been very wide and does not indicate consensus on any of the issues. The comments received are reflective of sectoral positions, i.e. of banks, NBFCs and industrial houses. Comments from others also spanned a wide range.

It may be recalled that pursuant to the announcement made by the Union Finance Minister in his budget speech for the year 2010-11 that the Reserve Bank was considering giving some additional banking licences to private sector players, the Governor, Reserve Bank of India indicated in the Annual Policy Statement for the year 2010-11 that the Reserve Bank would prepare a discussion paper marshalling the international practices, the Indian experience as well as the extant ownership and governance (O&G) guidelines and place it on the Reserve Bank's website by end-July 2010 for wider comments and feedback. Accordingly, the Reserve Bank released on its website on August 11, 2010, the Discussion Paper on "Entry of New Banks in the Private Sector" seeking the views/comments from banks, non-banking financial institutions, industrial houses, other institutions and the public at large.

The Discussion Paper reviewed the international and Indian experience on issues listed below together with possible approaches with the pros and cons of each of the approaches.

- i. Minimum capital requirements for new banks and promoters contribution
- ii. Minimum and maximum caps on promoter shareholding and other shareholders
- iii. Foreign shareholding in the new banks
- iv. Whether industrial and business houses could be allowed to promote banks
- v. Should Non-Banking Financial Companies be allowed conversion into banks or to promote a bank
- vi. Business model for the new banks

Detailed discussions on the above issues were held on October 7 and 8, 2010 with associations of stakeholders from the industry, banks, NBFCs and MFIs and some consultants, viz, CII, ASSOCHAM, FICCI, IBA, RRBs Officers' Federation, FIDC, MFIN, Ernst & Young, and Pricewaterhouse Coopers. In addition, comments on the discussion paper were received from a large number of respondents which include parties interested in setting up new banks, industry associations, banks, academicians, eminent personalities associated with banking and finance and members of general public.

### **Gist of Comments**

The gist of comments on various issues received from important stakeholders and eminent people through mail and discussions is summarised below:

**(A) Minimum capital requirement for new banks**

There were diverse views on the minimum initial capital requirement of new banks to be set up in the private sector. Generally, the federations/associations of industry/banks favoured a high start-up capital of ` 1000 crore, which could be raised up to ` 1500-2000 crore over a period of time, as new banks would require high investments in technology for financial inclusion and to scale up operations to be viable. Further, higher level of minimum capital would ensure that only serious players with long term vision could enter banking sector.

NBFC/MFI sector preferred a lower start-up capital ranging from ` 300 to ` 500 crore. With this capital requirement, it has been argued that 30- 40 banks could be licensed within a period of next 5-10 years with dedicated focus on financial inclusion. One view was that a large bank with capital of ` 1000 crore was unlikely to be effective at local lending or at financial inclusion and therefore, RBI may also consider giving restricted (traditional) banking licences to about 20 new banks with minimum capital of ` 50 crore and a capital to asset ratio of not less than 15 percent.

**(B) Promoters' shareholdings in new banks**

The suggestions on initial promoters' contribution ranged from 30 percent to 100 percent. The federations/associations of industry suggested a range of 40-51 percent, while NBFC/MFI sector suggested a lower range of 30-40 percent. The minimum promoters' contribution to be retained after dilution of stake over a period of 5-10 years ranged from 5-26 percent. The industry representatives were of the view that strong companies are promoter driven and therefore, advocated a higher range of final stake holding of 20-26 percent as it would ensure long term interest and commitment of the promoters. There was a suggestion that on the lines of Canadian Model, depending upon the size of the bank, promoters should be permitted to hold to the extent of 40 percent in case of banks with ` 1000 crore initial capital, 30 percent in case of banks with ` 1000-2000 crore capital and 10 -20 percent in case of banks with capital of more than ` 2000 crore. Another suggestion was that promoters' contribution could continue at 40-50 percent with restrictions on voting rights to ensure that promoters' economic interest is retained while addressing the concerns relating to control. The suggestion from the Micro Finance sector was a lower cap of 10 percent on promoters' holding in the long run to ensure that the banks are agenda driven rather than individual driven.

**(C) Foreign shareholdings in new banks**

A number of suggestions were received in regard to foreign share holdings ranging from capping the shareholdings at 50 percent to have no restrictions at all. Even amongst the industry/associations/ banks, while some of them advocated putting a cap at 50 percent, others have suggested continuing with the existing norm of 74 percent or not having any restriction for the initial period of 10 years. The NBFC/MFI sector was of the view that prescribing a cap of 50 percent for banking industry will be contradictory since foreign investments in NBFC sector is permitted upto 100 percent. They were in favour of retaining the existing norm of 74 percent or not putting any restrictions at all.



Another suggestion received from public was to put restriction on the voting rights, which should not exceed 5 percent individually and 26 percent in aggregate or such other limits as may be prescribed.

#### **(D) Industrial/business houses promoting new banks**

A wide range of views have been expressed as to whether industrial/business houses should be allowed to promote new banks. These include, why they should not be given, why they should be given and if so, who should be permitted and with what conditions. The federations/associations of industry as well as NBFC/MFI sector were generally in favour of permitting industrial/business houses to promote new banks. On the other hand, RBI has been advised by others to exercise caution about the entry of industrial houses into banking and not to allow industrial houses an unrestricted banking licence. Banks were also not in favour of the proposal due to the unsavory past experience in India and abroad and that large capital buffer that would be available to the banks sponsored by industrial/business houses would create an uneven playing field with the existing banks.

The main arguments put forward were :

##### **i) Arguments against giving licence to industrial/business houses:**

- Experience of other countries show that combining banking and commerce, that is, having a financial licence and having industrial activity, implies there would be a lot of connected lending. India does not have enough experience in supervising in a scenario when banks are owned by diversified corporates, and allowing such ownership could have serious potential disasters.
- The ownership structure of large industrial / business groups may open opportunities for regulatory arbitrage. In cases where the apex entity of a financial conglomerate is an unregulated entity, there could be gaps in risk assessment and supervision, and associated contagion risk within the financial conglomerate concerned and the wider system.
- India already has a concentrated wealth structure, which influences political decisions. Allowing industrial houses to own banks will exacerbate the concentration of economic power and political influence. However, as an experiment, a couple of industrial houses could be allowed to own restricted small banks and the future moves should be based on this experience.
- As there is no dearth of capital, existing players also could raise the required capital and, as such, no additional benefit accrues by granting bank licences to industrial houses.

##### **ii) Arguments in favour of giving licence to industrial/business houses:**

- Financial inclusion requires higher scale of operations which the industries would be able to bring by deploying large capital.
- Industrial / business houses have the entrepreneurial and managerial talent in running asset management companies, mutual funds and insurance companies and have successfully penetrated into rural India, as such, their talent could be gainfully harnessed in the banking sector. Moreover, industrial houses could bring to banking strong governance practices, management expertise, talent, innovation and global best

practices especially in customer service, as they have had a long history in nurturing and developing businesses.

**iii) Eligibility criteria for granting licence to the industrial/business houses:**

- Industrial / business houses with diversified shareholding and transparent shareholding structure should be permitted to set up banks.
- Industrial / business houses having predominant presence & experience in the financial sector (for certain minimum years, say 10 years) could be considered granting banking licence after examining their track record of dealing with public deposits and considering their existing retail customer base.
- Real estate groups should not be barred from entering into the banking sector as other businesses such as steel, textiles, petrochemicals, oil and gas, etc. are much more vulnerable to deep and prolonged cyclical downturns than real estate

**iv) Safeguards for allowing industrial/business houses to promote new banks:**

- If industrial / business houses are permitted to promote banks, they should not be allowed to have their own banking operations through the bank they have promoted.
- Banks promoted by industrial houses should be issued only a retail banking license for first 5 years. Subsequently, commercial banking should be allowed with restrictions on annual credit lines, extensive reporting requirements relating to large credits, etc.
- Inherent conflict of interest with the industrial houses setting up banks could be addressed through strong regulation relating to connected lending, mutual lending to each other's sponsor groups, ring fencing of the activities, governance standards and exposures which could be clearly addressed through licensing conditions. Violation of these regulations should attract severe penal action, including withdrawal of the bank license. No Board member or employee of an industrial house should be allowed to be on the Board of the bank or be an employee of the bank. Further, independence of the Board of the bank could be ensured by defining independent directors and restricting their compensation to only a professional fee.
- There may be value in experimenting with the industrial / business houses and the dual license structure offers some scope for it. A couple of industrial houses with substantial integrity could be given restricted small bank licenses. Whether the industrial / business houses' license is upgraded will depend on their performance and supervisory comfort with them. Establishing many small and mid size banks will help the banks to be innovative in delivering local need based services to the low income & poor households.

**(E) Permitting conversion of NBFC into banks or promoting new banks**

There were diverse views on the issue of permitting conversion of NBFCs into banks or to promote new banks. A leading industry association was of the view that conversion of NBFC should not be permitted due to difficulty in aligning its business model to banking. However, if NBFCs are allowed to promote new

banks, they should be asked to wind up the activities which banks can do, in a phased manner in order to eliminate the arbitrage opportunities due to the lighter regulations in the NBFC sector. Other industry associations were generally in favour of conversion or promotion of new banks by NBFCs. The NBFC/MFI sector was in favour of both the options. Banks were in favour of allowing only stand alone NBFCs to promote banks and at the same time, debarring NBFCs sponsored by industrial/business houses.

**(F) Business Model**

The dominant view of the industry associations and banks was that general banking licences should be given to new players for ensuring level playing field. Concentration in any geographical area or business line, such as, financial inclusion would be an unviable proposition. Financial inclusion should be market driven, but not prescribed. Since the banks need to cope with the objective of financial inclusion and also compliance with CRR, SLR, Priority Sector Advances stipulations, etc., certain time period needs to be given to the new banks for achieving the objectives.

As the objective of granting licence for new banks is financial inclusion, a different type of licence could be given to new banks. An eminent economist has suggested that their activities in the initial period may be restricted to more traditional banking, which could be relaxed as supervisors gained confidence in the banks. Full-fledged banking licences could be given after three years of operations subject to compliance with certain criteria. There are also suggestions that new banks should cater to small ticket financial products with clear definition regarding the size of loans. However, there is no need for specifying the areas in which the new banks should function as there are financially excluded people even in metros and big cities.

**R.R. Sinha**  
Deputy General Manager

**Press Release : 2010-2011/883**

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# **THE INSTITUTE OF COMPANY SECRETARIES OF INDIA**

## **NOTIFICATION**

New Delhi, Dated 22<sup>nd</sup> December, 2010

### **ICSI No.2 of December, 2010**

The election to the Eastern India Regional Council constituted vide Notification ICSI (Election) No.4 of September 2010 dated 6<sup>th</sup> September, 2010 was held in accordance with the Company Secretaries Regulations, 1982 and the Company Secretaries (Election to the Council) Rules, 2006 on 10<sup>th</sup> December, 2010 in accordance with the following Notifications :-

- (i) Notifications ICSI (Election) No.1, 3 to 5 of September, 2010 dated 6<sup>th</sup> September, 2010.
- (ii) Notifications ICSI (Election) No.7 to 9 of September, 2010 dated 6<sup>th</sup> September, 2010.

The following candidates have been declared elected to the Eastern India Regional Council (in the order elected) after the counting of votes held on 21<sup>st</sup> and 22<sup>nd</sup> December, 2010 :-

- 1. Shri Anjan Kumar Roy (FCS-5684)
- 2. Shri Mukesh Chaturvedi (ACS-10213)
- 3. Ms. Sunita Mohanty (FCS-5056)
- 4. Shri Deepak Kumar Khaitan (FCS-5615)
- 5. Shri Arun Kumar Khandelua (FCS-3829)
- 6. Shri Ranjeet Kumar Kanodia (FCS-5899)

Issued in accordance with Rule 36 of the Company Secretaries (Election to the Council) Rules, 2006.

**( N. K. Jain )**  
Returning Officer and  
Secretary & CEO